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March 17, 1999

Subject: Transcript for Public Meeting on Part 129: Security Programs of Foreign Air
Carriers

From: 
Elizabeth I. Allen (ARM-105)

The attached transcript for the public meeting on part 129, Security Programs of Foreign Air Carriers, has several typographical errors; namely, several of the speakers' names were misspelled. The court reporting service has been directed to make the necessary changes to the document, and as soon as these changes are made, to the satisfaction of the Agency, a corrected version of the transcript will be submitted to the docket, and this version will be removed. We apologize for any inconvenience this situation may cause.

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION
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DOCKET SECTION

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PART 129:

PUBLIC MEETING

ON .

SECURITY PROGRAMS OF FOREIGN AIR CARRIERS

+ + +

Wednesday, February 24, 1999

+ + +

U.S. Department of Transportation
FAA Auditorium
800 Independence Avenue SW
Washington, D.C. 20591

+ + +

Ida Klepper, Chair

EXECUTIVE COURT REPORTERS, INC.
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CHIEF COUNSEL
1999 MAR 17 P 4:26
RULES DOCKET

PANEL:

Ida Klepper
 Cathal Flynn
 Karl Shrum
 Michael Chase
 David Teitelbaum
 Patrick Murphy / Bert Kinghorn

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P R O C E E D I N G S

(On the record at 9:00 a.m.)

MS. KLEPPER: Good morning, ladies and gentlemen. My name is Ida Klepper, and I would like to welcome all of you to this public meeting, to receive comments on the proposed rule on Security Programs of Foreign Air Carriers.

Before going over the meeting procedures, and then proceeding to today's speakers, I would like to take just a moment, and introduce **Cathal** Flynn, who is FAA's Associate Administrator for Civil Aviation Security.

ADM. FLYNN: On behalf of Administrator Jane Garvey, I want to welcome all of you who have come to this session today. The seriousness of this proposed rulemaking is indicated by the number of people who have come very long distances, indeed, to be present. We appreciate that level of interest in the rule, and I and the other panelists will be very attentive to your presentations, and of course those presentations will be recorded, and become part of the comments on the rule, which we will be evaluating. So again, thank you very much, and Ida will introduce the other members of the panel.

MS. KLEPPER: Thank you, Admiral Flynn.

1 Yes. Now on to the remaining members of the
2 panel. To Admiral Flynn's left is Karl Shrumm,
3 Manager, Civil Aviation Security Division, Office of
4 Civil Aviation, **Security** Policy, and Planning, FAA.
5 After Karl, I believe we will be joined by Mike Chase,
6 who-is the manager of the Certification and Security
7 Law Branch, Office of Chief Counsel. Next is David
8 Teitelbaum, Economist, Office of Aviation Policy and
9 Plans, FAA, and Patrick Murphy, Deputy Assistant
10 Secretary for Aviation and International Affairs,
11 Office of the Secretary, Department of Transportation.

12 Again, my name is Ida Klepper. I am the
13 Acting Director of the Office of Rulemaking of FAA, and
14 I will be serving as today's program facilitator.

15 The FAA is holding this meeting in order to
16 provide the public an opportunity to present comments
17 regarding the proposed rule on Security Programs of
18 Foreign Air Carriers. These proceedings are being
19 videotaped, as well as being recorded by a court
20 reporter. A verbatim transcript of this meeting will
21 be made available, after March 17, 1999. Ordering
22 information is available at the registration table.
23 * Also, a copy of the transcript of this meeting will be
24 placed in the public docket. Speakers appearing on the
25 agenda have submitted requests to the FAA to be heard,

1 in accordance with the procedures outlined in the
2 Notice of Proposed Rulemaking that was published on
3 November 23, 1998. All persons who notified the FAA,
4 in response to the public meeting notice, requesting
5 time to make an oral statement, have been scheduled to
6 speak. Speakers are scheduled in the order in which
7 the request was received.

8 We have some documents available at the
9 registration table. The documents include the proposed
10 rule, the agenda for today's meeting, and some general
11 information is included in that agenda. Please note
12 that there is no admission fee or charge to participate
13 in this meeting. The session is open on a **space-**
14 available basis, for each person who registers. An
15 attendee list will be prepared and placed in the
16 docket, so if you have not registered, please do so, at
17 a break.

18 Since these proceedings are being conducted
19 in a public forum, sensitive security information
20 pertaining to air carrier and airport security programs
21 cannot be discussed at this meeting. If you would like
22 to make comments which include a reference, national
23 security information, or sensitive security
24 information, you should send your comments to the
25 following address: Federal Aviation Administration,

1 Office of Civil Aviation Security Operations,
2 Attention: FAA Security Contorl Point. The docket
3 number is **FAA-1998-4758**. That is 800 Independence
4 Avenue, Washington, D.C. 20591. For guidance on the
5 procedures for submitting this type of information, you
6 may contact Moira Lozada. That is M-C)-I-R-A Lozada,
7 L-Q-Z-A-D-A. She is in the Office of Civil Aviation
8 Policy and Planning. You can reach her at area code
9 202-267-5961.

10 Now, let me go over the procedures for the
11 meeting today. I will call on each speaker, in the
12 order outlined on the agenda. You will note that the
13 agenda is quite full, so I will be requesting that each
14 speaker please stay within the allotted time. If it is
15 necessary to interrupt your presentation, you are
16 invited to submit further written comments to the
17 docket. I will call on each speaker. If a speaker is
18 not here at that time, I will go on to the next
19 speaker. Periodically, I will go back over the agenda
20 to see if the absent speakers have arrived. Each
21 speaker will then present his or her information at the
22 podium. If there are any additional speakers
23 requesting time to make a presentation, if you inform
24 the staff at the registration table, we will add your
25 name to the agenda. If time permits, after we have

1 heard from all the other scheduled speakers, we will
2 call on you. Speakers are reminded to limit their
3 comments to issues directly related to this proposed
4 rule. For the benefit of the court reporter, before
5 presenting your statement, please clearly state your
6 name, and indicate **if** you are representing an
7 association, organization, or yourself. Again, if you
8 would, please remain within the specified time frame
9 allotted for you on the agenda.

10 After the presentation, members of the panel
11 may ask some follow-up questions. Questions from the
12 panel are intended to clarify or focus on particular
13 elements or concepts expressed in the presentation, and
14 to offer **you** a further opportunity to elaborate on
15 those areas. These questions are not intended to be a
16 cross-examination. In the event that questions are
17 asked beyond clarification, I will exercise the
18 prerogative of the chair and interrupt. Comments,
19 questions, or statements made by the panel members are
20 not intended to be, and should not be considered, a
21 final position of the FAA.

22 You are reminded again that issues other than
23 those directly related to the proposed rule will not be
24 considered during this meeting. I will terminate all
25 discussions that are not relevant. We will then move

1 on to the next speaker.

2 And with that, I would like to call on this
3 morning's first scheduled speaker. The first scheduled
4 speaker is David Lord, Director of Transport Security,
5 U.K. Department of Environment, Transport, and the
6 Regions.

7 PRESENTATION OF THE
8 UNITED KINGDOM DEPARTMENT OF
9 ENVIRONMENT, TRANSPORT, AND THE REGIONS
10 BY DAVID LORD:

11 Good morning, ladies and gentlemen. For the
12 benefit of those of you who don't know me, my name is
13 David Lord, and I am the U.K.'s Director of Transport
14 Security, responsible to the Deputy Prime Minister for
15 the Regulations Governing Aviation Security at U.K.
16 airports.

17 I am grateful for this opportunity to address
18 the panel. The U.K. will be submitting a written
19 response, setting our objections to this legislation in
20 detail. However, my government regarded it as
21 essential to leave you in no doubt at all as to the
22 U.K.'s strong opposition to what is proposed, and for
23 me therefore to appear personally before you, to urge
24 the Administrator to revert to Congress, to explain
25 why the new law is fundamentally flawed, and ultimately

1 unworkable.

2 At the outset, I should point out that this
3 attempt to apply U.S. law outside the territorial
4 limits of the United States is objectionable to my
5 government. In effect, the U.S. is seeking to dictate
6 how we should run our affairs in Britain. Such an
7 infringement of our sovereignty cannot be simply
8 ignored. Moreover, the provisions the Act run contrary
9 to internationally agreed arrangements, under the
10 Chicago Convention, to which the U.S. is a contracting
11 party.

12 The U.K. attaches importance to these issues
13 of principle. Accordingly, we shall be making
14 representations to the U.S. Government, at the highest
15 political level.

16 I know other speakers today will be making
17 similar points, so I intend now to focus on the issues
18 raised by implementation, some of which would not
19 necessarily have been apparent to Congress, when the
20 Act was passed.

21 The U.K. is at one with the U.S. Government
22 in believing that international cooperation is
23 absolutely vital in the fight against terrorism, also
24 that major efforts must continue to be made to raise
25 aviation security standards worldwide. It was, after

1 all, the U.K. and the U.S. who led the world in the
2 aftermath of the Lockerbie tragedy in pressing for
3 much-needed improvements.

4 But, by seeking to impose its particular
5 regime on other countries against their wishes, the
6 U.S. will certainly damage **cooperation**. As America's
7 staunchest ally against the terrorist threat, the U.K.
8 can only view with dismay this misguided attempt to
9 force through implementation of the Act. Nor is it
10 going too far to say that the new legislation is a
11 complete nonsense in security terms.

12 The Act ignores the cardinal principle of
13 risk management, that is, matching the degree of
14 security to the level of threat. The Identical
15 Measures provision also removes all discretion as to
16 how best to protect. If implemented, the Act would
17 result in the introduction of unnecessary and
18 inappropriate procedures; unnecessary, because they
19 would not be consonant with the level of threat, and
20 inappropriate, because they would not necessarily suit
21 the airport environment outside the U.S. There would
22 be a diversion of expensive resources and effort away
23 from areas which are far more important.

24 In short, pursuit of the Act as it stands
25 would actually be prejudicial to aviation security, and

1 would further delay the implementation of adequate
2 standards throughout the world. Was that what Congress
3 intended? I think not.

4 What the Act seems to be designed to do, is
5 to ensure a commercial level playing field between U.S.
6 carriers and their **foreign** competitors, so far as
7 security costs are concerned, and realities have
8 nothing to do with better security. Indeed, the Notice
9 of Proposed Rulemaking states that the Identical
10 Measures requirement will only be applied, where
11 foreign carriers are competing with U.S. carriers on a
12 given route to the U.S.

13 The Act also flies in the face of the
14 sensible principle of home state responsibility set out
15 in the Chicago Convention. If all nations behaved in
16 the same way as the U.S. is currently behaving, the
17 result will be complete chaos.

18 For example, the U.K. could take the same
19 approach, and insist on all carriers flying to the U.K.
20 from the U.S. applying measures set by me, as the
21 British regulator. Quite apart from the inevitable
22 resentment this would cause, implementation of a U.K.
23 style regime would necessitate the expenditure of
24 hundreds of millions of dollars at U.S. airports, on
25 the type of sophisticated, automated baggage

1 reconciliation and screening facilities which we deploy
2 at our airports.

3 As fellow professionals, I know FAA
4 colleagues are well aware that appropriate protection
5 can be achieved in a variety of ways, and that a choice
6 needs to be made, according to the operating
7 environment. But the Identical Measures provision in
a- the new act allows for no variation, and pays no regard
9 to the situation which exists at U.K. and other foreign
10 airports.

11 At London's Heathrow, for example, some
12 80 percent of the traffic is international, and
13 some 40 percent on transfer. The facilities, including
14 the security arrangements, are designed accordingly.

15 The U.K. has been quite prepared to grant the
16 FAA's longstanding request, properly made, under the
17 arrangements in Annex 17 to the Chicago Convention, for
18 special measures to be applied in the U.K. to U.S.
19 carriers, in order to counter the particular terrorist
20 threat to them. But what may, in the view of the FAA,
21 be feasible and justified for U.S. airlines, and for
22 other carriers at special risk, simply is not possible,
23 or necessary for all.

24 Which brings me on to the economic
25 consequences of implementation. Substantial additional

1 costs would accrue, as a result of implementing the
2 provisions of the Act, in the U.K. These will be
3 outlined in our written response to the NPRM. However,
4 I would point out, that because of the way aviation
5 security is financed in Britain, some of these costs
6 would result in increased landing charges.

7 U.S. carriers complain already about the
8 level of search fees. In this way, the provisions in
9 the Act would further increase the burden on all
10 carriers, including U.S. airlines.

11 I have left until last a major stumbling
12 block for the U.K., which would also have very
13 significant consequences for the U.S. carriers, if the
14 proposed rule were to have effect. A careful analysis
15 of the impact which implementing the Act would have on
16 our larger airports has shown that the measures which
17 the FAA requires under its ACSSP would result in the
18 loss of a large number of departure slots, and
19 therefore services, due to the terminal space
20 limitations and consequent limiting of times for
21 aircraft being on stand. Such slot losses would
22 have the most serious economic consequences, far
23 exceeding the costs of providing the staff and
24 equipment which would be needed to extend the FAA's
25 measures to foreign carriers. Any reduction in the

1 number of slots would affect all carriers. In this
2 way, U.S. airlines would lose out, along with the
3 others. In addition, there would have to be a
4 spreading of departures, which would mean some flights
5 could not leave at the most popular times. There would
6 be a lengthening of minimum connecting times, and
7 further congestion caused by the denial of off-airport
a check-in. My colleagues from BAA, and from British
9 Airways, whose presentations follow mine, will explain
10 these implications in more detail.

11 In conclusion, if this was a genuine attempt
12 to improve security, the U.K. would be the first to
13 try to reach an accommodation with the U.S. My
14 government remains steadfastly committed to the highest
15 standards achievable in practice, and for continuous
16 efforts to be made to upgrade aviation security, as new
17 techniques become available. As any knowledgeable
18 individual in the business will tell you, standards in
19 the U.K. are now among the best in the world. And as I
20 have outlined in this presentation, this is not about
21 improving security. Indeed, it will actually be
22 counterproductive, so far as preventing international
23 terrorism is concerned. Moreover, the economic
24 consequences of implementation would be plainly so
25 great that the U.K. Government cannot accept them, even

1 if it was prepared to forego its sovereign right to
2 determine what security measures should be applied in
3 Britain.

4 Unless action is taken by the U.S. to change
5 course, implementation of the rule as proposed is bound
6 to cause immense and wholly unnecessary damage to the
7 aviation industries, in the U.K., the U.S., and
a elsewhere, as well as being detrimental to the fight
9 against terrorism. The matter lies in your hands.
10 Thank you for listening.

11 MS. KLEPPER: Thank you, Mr. Lord. If you
12 would wait for just a moment?

13 MR. LORD: Sure.

14 MS. KLEPPER: Are there any questions or
15 comments from the panel?

16 MR. TEITELBAUM: Yes, I have got one. This
17 may be addressed by your two colleagues that will be
18 following.

19 MR. LORD: Sure.

20 MR. TEITELBAUM: You were talking that there
21 would be longer times between flights, so you would
22 have less flights, lower revenues. In your written
23 comment, it would be very helpful if you could give us
24 your estimate as to what those numbers would actually
25 be.

1 MR. LORD: Sure. Well, I think you will be
2 hearing some of that in the next two presentations, in
3 fact, already.

4 MR. TEITELBAUM: Thank you, sir.

5 MR. LORD: But there will be more detail in
6 our written submission.

7 MR. TEITELBAUM: Thank you, sir.

a MR. LORD: Thanks very much.

9 MS. KLEPPER: Thank you. Any other
10 questions, comments? None? Thank you.

11 MR. LORD: Thanks. Thank you very much.

12 MS. KLEPPER: Our next scheduled speaker is
13 Ian Hutcheson, Head of Group Security, British Airport
14 Security. Oh, BAA. I am sorry. PLC.

15 PRESENTATION OF THE

16 BAA, PLC

17 BY IAN HUTCHESON:

18 Good morning, ladies and gentlemen. My name
19 is Ian Hutcheson, and I am the Head of the Security for
20 the BAA group of companies. BAA own and operate eleven
21 airports, worldwide, with seven situated in the U.K.

22 I would like to thank the panel for this
23 opportunity to present to you the potential
24 consequences, particularly at Heathrow and Gatwick
25 airports, should this proposed rule be implemented.

1 May I say at the outside, the BAA gives
2 safety and security the highest priority at all times,
3 and this commitment has recently been demonstrated by
4 an investment of almost half a billion dollars, in
5 whole baggage screening systems, for all our airports
6 in the U.K.

7 The rule as written is clearly intended to
8 address identical security measures in airline security
9 programs. However, in the U.K., airlines cannot
10 implement extra measures, in isolation. They require
11 the airport operator to agree and facilitate the
12 security measures that they put into practice. If this
13 rule were implemented, therefore, there would be
14 significant **negative** consequences for the
15 infrastructure of the terminals that these carriers
16 operate from.

17 Airport operators would, for example, have to
18 provide facilities and infrastructure for additional
19 concourse space to facilitate profile queues, to
20 provide additional concourse space for additional
21 screening equipment, and to provide facilities at the
22 departure date for searching of passengers.

23 Heathrow and Gatwick airports continually
24 operate at close to capacity, and these measures would
25 have a significant impact. The impact would vary, from

1 terminal to terminal, depending upon the design and
2 layout of the building, and the traffic operating from
3 a particular terminal. The terminals likely to be
4 affected are Terminal 3.

5 Terminal 3 has operated at full capacity for
6 some considerable time, and in order to improve
7 customer service, a **40,000-square-foot** extension was
8 recently opened to improve facilities for our
9 customers. The provision of the facilities I have just
10 mentioned would actually- negate this improvement at
11 Terminal 3, and lead to a reduction in customer
12 service. The terminal is, however, constructed with
13 closed-gate facilities, which could facilitate
14 departure gate searches.

15 Terminal 4 is a totally different building,
16 of modern design, and completely open plan. It is
17 designed for maximum operational flexibility, with no
18 predesignated areas for carriers. Implementation of
19 the suggested measures would require considerable
20 reconfiguration of this terminal, which could reduce
21 concourse capacity by approximately 580,000 passengers
22 per annum, purely on space grounds alone. It could
23 also reduce the available check-in capacity by
24 approximately 680,000 passengers per annum, and the
25 overall capacity reduction could be between 1.9 and

1 3 million passengers per annum, when designated stands
2 and searching areas for selectees are provided at the
3 final departure gate.

4 These potential capacity outcomes are similar
5 at Gatwick South Terminal, which is an accommodation of
6 mixed design, including both open and closed gate
7 rooms. However, there -would again be potential
a capacity losses. In this terminal, concourse capacity
9 could reduce by a maximum of 93,000 passengers per
10 annum, check-in capacity could reduce by 460,000
11 passengers per annum, with an overall capacity
12 **reduction** of between one and one and a half million.

13 Gatwick North Terminal is of similar design
14 to Terminal 4, designed for maximum flexibility in the
15 use of terminal facilities. The potential capacity
16 issues there are a loss of concourse capacity up to
17 324,000 passengers, a potential loss of check-in
18 capacity up to 635,000 passengers per annum, and an
19 overall capacity loss of between 2.6 and 3.1 million
20 passengers.

21 The need to designate specific operating
22 areas for carriers operating between the U.K. and USA
23 within our terminal buildings, particularly Terminals 4
24 and the two Gatwick terminals, significantly reduces
25 the flexibility of operation that BAA requires to

1 operation these two airports at or near **capacity**. It
2 **is** highly possible, therefore, that these capacity
3 issues could result in a loss of aircraft movements, at
4 all three terminals. The maximum figures could be
5 15,000 movements for Terminal 4, 12,000 movements for
6 Gatwick South, and 27,000 movements at Gatwick North.

7 The consequences of this-proposed rule, for
8 BAA, therefore, would be to accept a loss of capacity,
9 to build new facilities, or to reallocate airlines to
10 more suitable accommodation, or a-combination of all
11 three. Our objective is a grow our business, and a
12 loss of capacity is totally unacceptable.

13 To build new facilities, many of you in this
14 room will appreciate how long the planning for Terminal
15 5 is taking. It is therefore not a simple solution.
16 The **40,000-square-foot** extension of Terminal 3 costs
17 \$45 million. To extend Terminal 4 and the Gatwick
18 terminals to a similar standard could therefore cost in
19 the region of \$135 million.

20 To reallocate airlines around the airport is
21 a fairly major exercise, which is not within our gift,
22 and would need some regulatory authority. It would
23 also cause major disruption, and inflict costs which we
24 could not even calculate at this stage.

25 Who should pay, therefore, for this

1 disruption, if this rule becomes law? All carriers
2 could be asked to contribution, but this would lead us
3 into conflict with European competition laws, who would
4 rule out contributions by all on the grounds of
5 fairness. Governments could pay. The U.S. Government,
6 who have actually passed the **rule**, could be asked to
7 **pay**. The U.K. Government could be asked to pay. David
8 Lord has already declined.

9 The trans-Atlantic carriers could actually be
10 asked to pay, it could be argued, as the fairest way,
11 relating cost or capacity loss to the percentage of
12 trans-Atlantic business. If this were to be a
13 solution, the percentage of the individual companies of
14 trans-Atlantic business are illustrated on this slide.
15 British Airways could contribute 39.7 percent to the
16 loss of capacity, or to the cost of implementing the
17 measures. American Airlines, 23 percent. United
18 Airlines, 19. Virgin, 13. And the others, 4-1/2. At
19 Gatwick, British Airways, 33 percent. American
20 Airlines, 13 percent. Continental, 12-1/2. Virgin,
21 10.9. Delta, 9.5. Northwest, 6.7. The others, who
22 are mainly all the charter carriers, 13.8.

23 This is only a suggested solution. It is
24 highly likely that BAA, faced with such a decision,
25 would seek governmental assistance in deciding how any

1 capacity or financial issues should be addressed.

2 In conclusion, therefore, I would say that
3 implementation of this proposed rule could cause all
4 trans-Atlantic carriers either capacity losses,
5 increased costs, or major disruption, or, most likely,
6 a combination of all three. Thank you very much.

7 MS. KLEPPER: Thank you, Mr. Hutcheson. Wait
8 just a moment. Are there any questions? David.

9 MR. TEITELBAUM: Yes, sir. I want to thank
10 you for the numbers that you have presented to us.
11 I do have one question here. When you were going over
12 the capacity loss, you had some numbers for each of the
13 concourses for the, concourse capacity would be
14 decreased, and then you also had another number for the
15 baggage check-in amount that would be increased, and in
16 all cases, the total was greater than the sum of the
17 two, so I am confused. I am wondering if you could
18 elaborate, please.

19 MR. HUTCHESON: Right. The overall total,
20 actually, is based on the stand allocation at the final
21 departure gate. There are two separate issues, really.
22 Some of the measures impact on concourse availability,
23 and the space required for profile queues, and the
24 number of people on the concourse would actually reduce
25 the number of passengers a terminal could handle on the

1 concourse.

2 The overall capacity reduction in a terminal
3 is actually taken into account when you add in the
4 stand allocation. At Heathrow and Gatwick, the
5 flexibility means that any aircraft can use any gate.
6 If you have to provide searching facilities, permanent
7 searching facilities, to facilitate that part of the
8 proposed rule, then you would have to designate **stands**.
9 The reduction in flexibility would actually reduce the
10 number of aircrafts capable of being handled at any
11 given terminal, and that is how the maximum figure has
12 actually been calculated. There is no correlation
13 between the figures intended. We will explain that in
14 a written submission.

15 MR. TEITELBAUM: Thank you. In addition, you
16 also said the added costs for numbers, number three, at
17 Heathrow, would be 45 million, and four and five, I
18 believe, 130 million. Will you provide breakdown
19 details, again, of how you came up with those numbers?

20 MR. HUTCHESON: Yes, indeed.

21 MR. TEITELBAUM: Thank you.

22 MS. KLEPPER: Thank you, David. Thank you.

23 Our next speaker ^{IAIN} ~~is~~ Ian Jack, Security
24 Director of British Airways.

PRESENTATION OF

BRITISH AIRWAYS

Iain
BY IAN JACK:

Panel members, ladies and gentlemen, good morning. My name is *Iain* Jack. Thank you for raising my title to Director of Security. My card says Head of Security. But I will take that back with me, thank you.

I am grateful of the opportunity to appear before you, today, particularly as I am the first airline representative to do so. You have heard Mr. Lord, of the U.K. Department of Transport, and from Mr. Hutcheson, of BAA, about their views of the impact, of what I will now refer to as the Hatch Act, and what that would have on the aviation industry, and operations at London's Gatwick, and Heathrow, in particular.

British Airways operates -- services to the United States of America from these airports, as well as from Manchester, and in 1998, we had 4,026 departures from Gatwick, 8,757 from Heathrow, and 367 from Manchester. However, as you already heard from Mr. Hutcheson, the major impact of the Hatch Act will be felt at Heathrow and Gatwick, and I will give a net estimate of that effect on British Airways later.

1 I believe there are four issues of principle
2 on which objections to the Hatch Act should focus. The
3 first of these is constitutional. I am not going to
4 discuss this, as I consider it to be an
5 intergovernmental issue, in the first instance, and I
6 know that others will address issues related to
7 international agreements, whose principles are breached
8 by this Notice of Proposed Rulemaking.

9 The next issue is that of risk, in terms of
10 management of the threat to the security of airlines,
11 operating from the United Kingdom. British Airways
12 performs security measures, in compliance with those
13 required by the assessment of risk, by the U.K.
14 Government regulatory authority, counterparts to the
15 FAA. However, we frequently exceed these requirements,
16 in pursuit of our primary corporate value, to be a safe
17 and secure airline. For example, in the United States,
18 we do everything that is required by the FAA, and more.
19 I will not go into this in public, for security
20 reasons.

21 You have heard from Mr. Lord that the Hatch
22 Act would result in the introduction of unnecessarily
23 and inappropriate measures which would not enhance, and
24 would in fact be prejudicial to aviation security, and
25 I support his view.

1 Practicability is the next issue, and you
2 have heard from Mr. Hutcheson about the potential
3 impact which the measures required of non-U.S. airlines
4 departuring from Gatwick and Heathrow would have.

5 I will discuss some of the consequences of
6 the Hatch Act on British Airways, under the next issue
7 of cost. I should add that cost is never a determining
8 factor in assessing the need for effective security
9 measures by British Airways, but airlines were advised,
10 in Notice 98-17, which contains the **NPRM** provisions,
11 that substantive comments should be accompanied by cost
12 estimates.

13 I can tell you that the capital and operating
14 cost of compliance would be outweighed, in scale and
15 substance, by far, by the consequence of terminal
16 capacity losses which Mr. Hutcheson detailed. Such
17 losses could not be addressed in the short term, and
18 the provision of additional facilities would be a
19 difficult and costly exercise in itself. In the short
20 term, the provisions would limit capacity on offer to
21 customers, unit costs would increase, fares would rise,
22 and schedules become less attractive, to the
23 disadvantage of carriers and passengers, alike. In our
24 view, none of these additional costs and losses would
25 provide enhanced security for the traveling public.

1 Let me take you back to the potential
2 outcomes and their consequences outlined by Mr.
3 Hutcheson, and I will relate these to British Airways.
4 I will focus on the loss of capacity, based on details
5 which Mr. Hutcheson provided, to illustrate the impact
6 of this option of the Hatch Act on British Airways.

7 In the scenario where the trans-Atlantic
8 carriers sustain the loss of departures and
9 consequential arrivals, British Airways' U.S. capacity
10 at Gatwick would be cut by up to 33 percent. That is
11 the equivalent to a reduction of 1,340 services, from a
12 total of 4,026, leaving 2,786. The Heathrow picture is
13 even more dramatic, with a 39 percent reduction, which
14 is the equivalent to 3,477 services, from a total of
15 8,757, leaving just 5,280.

16 There is another related matter, involving
17 departures. To perform FAA-required security measures
18 at the last point of departure to the USA, minimum
19 connecting investigations for passengers transferring
20 to these -- flights would have to be extended. This
21 would add to the costs of losses sustained by British
22 Airways, through the reduction of connecting arrivals,
23 as a need to extend minimum connection times.

24 Let me suggest, in response to the arguments
25 advanced in support of the Hatch Act, that the net

1 result of this implementation be maybe the exact
2 opposite which its proponents sought to achieve.
3 I expect the loss of capacity scenario to be repeated
4 across Europe, as other airports and airlines assess
5 the effect of the Hatch Act on them. As at Gatwick and
6 Heathrow, these potential losses would be shared across
7 the airline community, and by the economies of the
8 countries concerned.

9 Panel members, ladies and gentlemen, that
10 concludes my presentation, and I shall be making
11 substantive written comments on the NPRM, which will
12 reach the FAA prior to the closing date for submission,
13 on the 23rd of March, 1999. I will be glad to answer
14 any questions the panel members may have at the end of
15 this presentation, and thank you again, for the
16 opportunity to appear before you today.

17 MS. KLEPPER: Thank you, Mr. Jack. Are there
18 any questions or comments from the panel?

19 MR. TEITELBAUM: Yes.

20 MS. KLEPPER: David.

21 MR. TEITELBAUM: Let me, again, request that,
22 you cited some numbers. You said that there would be
23 some, the connection time would be decreased. Again,
24 any numbers supporting that, if you believe, for
25 instance, that the minimum connection time would go

1 from one hour to one hour, 20 minutes, your estimates
2 would be very helpful, in going through this. In
3 addition, your estimates for building new facilities
4 reallocating, again, with documentation, would be very,
5 very helpful.

6 MR. JACK: Thank you. I will take note of
7 that, and you will recall, also, that Mr. Lord
8 mentioned the loss of off-airport baggage check-in
9 facilities, which will add to the congestion. And I
10 will include that, as well.

11 MR. TEITELBAUM: Thank you.

12 MS. KLEPPER: Thank you.

13 MR. JACK: Thank you.

14 MS. KLEPPER: Our next scheduled speaker is
15 John ~~Augustine~~ ^{Augustine}, ICAO.

16 PRESENTATION OF THE

17 INTERNATIONAL CIVIL AVIATION ORGANIZATION

18 BY JOHN V. ~~AUGUSTINE~~ ^{Augustine}:

19 Ladies and gentlemen, good morning. My name
20 is John ~~Augustine~~ ^{Augustine}, and I am here to present the
21 comments of the International Civil Aviation
22 Organization on the Notice of Proposed Rulemaking.

23 At the first meeting of its 156th session on
24 5 February 1999, the Council of ICAO considered the
25 legal and technical aspects of the Notice of Proposed

1 Rulemaking published by the FAA on 23 November 1998
2 concerning the 'Hatch Amendment" to the 1996
3 Antiterrorism and Effective Death Penalty Act of the
4 United States.

5 As a result of its deliberations, the Council
6 determined the ICAO position related to the
7 aforementioned matter and has adopted a Resolution,
8 which I shall present to you a little later.

9 The Council noted that the **NPRM** does not
10 indicate exactly what is meant by 'identical" measures,
11 nor explains how it would differ in substance from the
12 current regime. Where foreign government authorities
13 perform the security functions on the carrier's behalf";"
14 the proposal would permit the carrier to refer the FAA
15 to that government authority, however, it does not
16 specify action to be taken afterwards. The 'Hatch
17 Amendment@ and the proposed rule clearly leave the way
18 open for unilateral security requirements to be imposed
19 and unilateral changes to be made to the United States'
20 security requirements after the law has entered into
21 force.

22 The Council, when considering the NPRM,
23 recalled the well-established rule of international law
24 reiterated in Article 1 of the Convention on
25 International Civil Aviation (the 'Chicago

1 Convention"), that every State has complete and
2 exclusive sovereignty over the airspace above its
3 territory. In line with this provision, Article 11 of
4 the Convention states that, and I quote:

5 'Subject to the provisions of this
6 Convention, the laws and regulations of a
7 Contracting State relating to the admission
8 to or departure from its territory of
9 aircraft engaged in international **air**
10 navigation, or to the operation and
11 navigation of such aircraft while within its
12 territory, shall be applied to the aircraft-
13 of all contracting States without distinction
14 as to nationality, and shall be complied with
15 by such aircraft upon entering or departing
16 from or while within the territory of that
17 State."

18 However, Article 3.1 is subject to the other provisions
19 of the Convention and is limited in its scope and
20 application by these other provisions. Accordingly,
21 provided that the other provisions of the Chicago
22 Convention are complied with, it is acknowledged that a
23 State has the sovereign right to impose certain
24 conditions, including security requirements upon a
25 foreign aircraft entering or departing from its

1 territory, or while such aircraft is within its
2 territory. It should be noted that the condition and
3 consistency of such national laws and regulations
4 relating to admission, as set out in Article 11,
5 reflect the principle that the national legislation of
6 a State should be fully compatible with its
7 international obligations, including those found in the
8 Chicago Convention.

9 Under Article 37 of the Chicago Convention,
10 each Contracting State undertakes to collaborate in
11 securing the highest practicable degree of uniformity
12 in regulations, standards, procedures and organization;
13 and to this end, ICAO has been empowered to adopt
14 Standards and Recommended Practices (otherwise known as
15 SARPs). In line with their undertaking given through
16 the Chicago Convention, Contracting States should avoid
17 promulgating or enforcing rules and regulations which
18 are more exacting or different from the SARPs contained
19 in the Annexes to the Chicago Convention, including
20 Annex 17, as this would negatively impact on the
21 undertaking to secure uniformity. Should a change in
22 the content or implementation of the SARPs be deemed
23 desirable by a particular State, it should effect such
24 change through the agreed multilateral forum, namely,
25 ICAO. ICAO Assembly Resolution A32-22 reaffirms the

1 important role of ICAO in facilitating the resolution
2 of questions which may arise between Contracting States
3 in relation to matters affecting the safe and orderly
4 operation of international civil aviation throughout
5 the world.

6 The rationale behind the uniformity aspect of
7 Article 37 of the Chicago Convention and the
8 desirability of achieving such uniformity through the
9 Chicago system is clear if one considers the chaos
10 which could potentially result if States require
11 foreign aircraft flying to their territory to comply
12 with their own national security provisions where these
13 differ from Annex 17 provisions. Bearing in mind that
14 the State of departure in the exercise of its
15 sovereignty would also have security provisions to be
16 adhered to by aircraft leaving its territory, this
17 could lead to a situation where the operator would have
18 to comply with different and possibly conflicting
19 security provisions when these differ from Annex 17.
20 The Council recognizes that the possibility of such
21 conflict lessens or disappears when the requirements of
22 all States concerned are in accordance with Annex 17.

23 Furthermore, pursuant to Article 38 of the
24 Chicago Convention and a Council decision of 21
25 November 1950, a State should report and file a

1 difference with ICAO when its national regulations
2 affect the operation of aircraft of other Contracting
3 States in and above its territory, in three different
4 cases:

5 First, by imposing an obligation within the
6 scope of an Annex which is not covered by an ICAO
7 Standard:

8 Second, by imposing an obligation different
9 in character from that of the corresponding ICAO
10 Standard; and

11 Finally, by being more exacting than the
12 corresponding ICAO Standard.

13 ICAO is deeply concerned about the
14 extraterritorial aspects of the Act and the proposed
15 amendment to the Regulations, since it will require
16 action in the State of last departure to the United
17 States which could conflict with the laws and
18 regulations which such States of departure, in the
19 exercise of their sovereignty, are entitled to
20 promulgate and to enforce.

21 It is accepted that the degree of protective
22 security applied to international air operations should
23 be commensurate with the level of threat in order to
24 manage risk effectively. As the NPRM acknowledges,
25 there are situations when an increased threat indicates

1 a need for additional measures: in such circumstances
2 it is envisaged that the FAA will impose such a
3 requirement as provided for in Annex 17. However, the
4 Act requires the FAA to take a line which is
5 inconsistent with the principles of risk management.
6 For example, by requiring the FAA to impose identical
7 measures on foreign carriers, the Act removes all
8 discretion as to how risks are to be managed, by both
9 the FAA and, indirectly, by the authorities of foreign
10 States. There are different approaches to security
11 which can be equally valid. By foreclosing on the
12 possibility of any variation, the Council declares that
13 this would lead to an imposition of inappropriate or
14 inefficient techniques.

15 Some practical difficulties are envisaged if
16 the security measures required under the NPRM are to be
17 implemented. For example, one of the measures being
18 considered limits air carriers to accepting baggage
19 only inside the terminal building for flights to the
20 United States from foreign last points of departure
21 where United States air carriers also operate.

22 Its implementation would, in a number of cases,
23 require additional terminal capacity necessary to
2 4 accommodate the checked baggage that is currently
25 handled outside the airport terminal. Whilst such may

1 be achievable for the United States carriers, it would
2 be impossible for all carriers. Denial of the
3 off-airport check-in of hold baggage in order to meet
4 the FAA requirement will create major difficulties from
5 a foreign carrier policy and passenger facilitation
6 point of view. The cost of introducing the measures
7 which the implementation of the Act will require would
8 be extremely high as foreign air carriers will need
9 additional equipment, personnel and training, and
10 foreign airports will need additional space to
11 accommodate these requirements.

12 It will be recalled that Annex 17 -- Section
13 3.2, entitled 'International Cooperation', as well as a
14 Resolution adopted by the Council at the seventh
15 meeting of its 126th Session on 16 February 1989 and
16 Assembly Resolution A32-22 call on Contracting States,
17 while respecting their sovereignty, to substantially
18 enhance cooperation and coordination between them in
19 order to improve the implementation of the existing
20 Standards and Recommended Practices and Procedures
21 relating to aviation security with the view to prevent
22 acts of unlawful interference against international
23 civil aviation. Cooperation in the fight against such
24 acts is accepted as vital by the international
25 community. The unilateral imposition of the security

1 measures such as it is envisaged in the NPRM threatens
2 such cooperation. In this regard, the Council
3 reiterated its request that **all** Contracting States
4 should enhance cooperation and coordination in relation .
5 to aviation security.

6 ICAO therefore submits that the development
7 of aviation security on the international level has
8 been accomplished with the full cooperation and support
9 of its 185 Member States. The imposition on foreign
10 air carriers of requirements which differ from or are
11 more exacting than the **SARPs** in Annex 17 (or, for that
12 matter, the other Annexes) could seriously damage the-
13 multilateral framework within which international civil
14 aviation has- developed and operates.

15 If I may read to you the resolution adopted
16 by the Council on the 5th of February, 1999.

17 The Council of the International Civil
18 Aviation Organization:

-19 Recognizing that all acts of unlawful
20 interference against international civil aviation
21 constitute a grave offence in violation of
22 international law;

23 Mindful of the continuing efforts of
24 Contracting States in the suppression of acts of
25 violence directed against international civil aviation;

1 Having considered the requirement under the
2 1996 Antiterrorism and Effective Death Penalty Act of
3 the United States that foreign air carriers in their
4 operations to and from airports in the United States
5 must adhere to the identical security measures that the
6 United States requires its air carriers serving the
7 same airports to adhere to;

8 --- Having further considered the proposed
9 amendment to Part 129.25(e) of Title 14 of the Code of
10 Federal Regulations of the United States to implement
11 the aforementioned provision of the Antiterrorism and
12 Effective Death Penalty Act;

13 Recalling that one of the prime objectives of
14 the International Civil Aviation Organization is to
15 meet the needs of the peoples of the world for safe,
16 regular, efficient, and economical air transport;

17 Recalling its resolution of 16 February 1989
18 in which calls upon member States, while respecting
19 their sovereignty, to substantially enhance cooperation
20 and coordination between them in order to improve the
21 implementation of ICAO Standards, Recommended Practices
22 and Procedures;

23 Drawing particular attention to Assembly
24 Resolution **A32-22** by which the Assembly, inter alia,
25 reaffirms the important role of ICAO to facilitate the

1 resolution of questions which may arise between
2 Contracting States in relation to matters affecting the
3 safe and orderly operation of international civil
4 aviation throughout the world;

5 Considering that in accordance with Article
6 37 of the Convention on International Civil Aviation
7 ("the Chicago Convention"), each Contracting State
8 undertakes to collaborate in securing the highest
9 practicable degree of uniformity in regulations and
10 practices in all matters in which such uniformity will
11 facilitate and improve air navigation:

12 Recalling that, in accordance with **Standard**
13 3.1.5 of Annex 17 to the Chicago Convention, each
14 Contracting State shall keep under constant review the
15 level of threat within its territory taking into
16 account the international situation and adjust relevant
17 elements of its national civil aviation security
18 programme accordingly;

19 1. The Council decides that the aforementioned
20 provisions of the Antiterrorism and Effective Death
21 Penalty Act of the United States and the proposed
22 amendment to the Code of Federal Regulations infringe
23 * basic principles of the Chicago Convention, and run
24 counter to the spirit of multilateralism contained in
25 such Convention;

1 2. Expresses its deep concern about the
2 extraterritorial aspects of the Act and the proposed
3 amendment to the Regulations, since they will require
4 action in the States of last departure to the United
5 States which could conflict with the laws and
6 regulations of such States of departure, in exercise of
7 their sovereignty, are entitled to promulgate and to
a enforce;

9 3. The Council notes with deep concern the
10 immense difficulties which would be placed on airlines
11 should they be required to comply with the security
12 requirements of both the State of departure and that of
13 the State of arrival where these differ from the
14 provisions of Annex 17 to the Chicago Convention;

15 4. The Council declares that the action of the
16 United States would lead to the imposition of
17 inappropriate and inefficient techniques in the
18 management of aviation security risks;

19 5. The Council declares that such action by the
20 United States would negatively impact on passenger
21 facilitation;

22 6. The Council declares further that the
23 imposition on foreign air carriers of requirements
24 which differ from or are more exacting than the
25 standards and recommended practices in Annex 17 would

1 seriously damage the multilateral framework of the
2 Chicago System within which the security of
3 international civil aviation has developed and
4 continues to develop;

5 7. The Council urges all States to ensure that
6 any action which they may take in the realm of
7 international civil aviation should be compatible with
a the Chicago Convention, and with the technical
9 provisions developed and adopted within the framework
10 of the Organization;

11 a. The Council requests Contracting States of
12 ICAO to refrain from imposing their own aviation
13 security provisions unilaterally upon foreign airlines
14 even if they believe that the technical provisions
15 adopted by the Organization are either insufficient or
16 are not being properly implemented;

17 9. The Council calls upon each Contracting State
18 to utilize the multilateral mechanisms of ICAO where it
19 believes that changes to the content or level of
20 implementation of the Standards and Recommended
21 Practices in the Annexes to the Chicago Convention are
22 necessary or desirable;

23 10. And finally, the Council reaffirms the
24 necessity for cooperation and coordination among States
25 in matters of aviation security, which has contributed

1 to the notable success in this area.

2 This concludes my presentation, and I wish to
3 thank you for allowing ICAO the opportunity to present
4 its views on the NPRM. Thank you.

5 MS. KLEPPER: Thank you, ^{Augustine} ~~Mr. Augustine~~. Are
6 there any questions or comments?

7 MR. MURPHY: Yes. Could I ask a question?

a Thank you for the statement. I thought it
9 was very well-done, and very clear, and strong, direct
10 and to the point, and the Resolution is very helpful.
11 The question I had was that, given the language which
12 calls upon Contracting States, urges that States
13 refrain, . urges that States ensure, and other
14 **statements**, I never saw in there a statement finding
15 that the proposal of the United States violates the
16 Chicago Convention. Would you comment on that? Is
17 this viewed as a violation of the Chicago Convention?

18 ^{Augustine} ~~MR. AUGUSTINE~~: If I may take you to the very
19 first resolving clause, there is a statement, or a
20 decision by the Council, that the provisions infringe
21 basic principles of the Chicago Convention.

22 MR. MURPHY: But again, that goes to the
23 principles. It is not a violation of the Convention,
24 per se?

25 ^{Augustine} ~~MR. AUGUSTINE~~: Well, I am not sure that the

1 **Council** really went into the fine distinction as to
2 whether. one-was drawing a distinction between basic
3 principles and provisions. I can say that the Council
4 did not address its mind as to whether there was a
5 distinction between the two, and, in that sense, chose
6 the word principles,- as opposed to violation.

7 MR. MURPHY: **Okay**. Well, thank you very
a much, and again, I think that this will be very
9 helpful.

10 MR. ^{Augustin}~~AUGUSTINE~~: Thank you.

11 MS. KLEPPER: Thank you.

12 MR. MURPHY: I think we have one more
13 question.

14 MS. KLEPPER: Oh, one more? David.

15 MR. TEITELBAUM: Yes. You mention, in here,
16 in the NPRM, and in the regulatory evaluation, we do
17 ask for comment, and on the off-airport check-in, and
18 you put in here, ● The cost of introducing the measures
19 which the implementation of the Act will require would
20 be extremely high as foreign air carriers will need
21 additional equipment, personnel and training, and
22 foreign airports will need additional **space** to
23 **accommodate** these requirements."

24 What I would ask is, that you ask your Member
25 States to ask their air carriers to provide us with

1' **costs.** That was one that specifically asked for
2 comment on, because we did not have a handle on this.
3 And in coming up with the amounts of additional
4 equipment and personnel and training,.it would be very
5 useful if the assumptions, like please just don't say,
6 we will need \$17 million more of additional equipment.
7 It would **be very** useful if that could be broken down,
a if, when you talk about the personnel-and training, if
9 you could talk about, well, we believe ten more people
10 would be needed here, fifteen here, at these wage
11 rates. So again, the more documentation on these
12 things that you can give us, the more helpful it would
13 be.

14 *Augustin*
MR. ~~AUGUSTINE~~: Yes. Thank you. I shall
15 certainly convey this request **to the** Secretary General.

16 MR. TEITELBAUM: Thank you.

17 MS. KLEPPER: Yes.- Another question?

18 MR. CHASE: Can I take the opportunity to
19 encourage people, when they do that, to submit detailed
20 information as it relates to the non-public security
21 measures, to the non-public docket, and not to the
22 public docket?

23 *Augustin*
MR. ~~AUGUSTINE~~: The non-public docket.

24 MS. KLEPPER: Thank you. Moving on to our
25 next speaker, Ryszard Zaremba, Coordinating Committee

1 Chairman on Security, ECAC.

2 PRESENTATION OF THE
3 EUROPEAN CIVIL **AVIATION** CONFERENCE
4 BY RYSZARD ZAREMBA:

5 Good morning, **ladies** and gentlemen. Let me
6 introduce myself. My name is Ryszard Zaremba, and I am
7 a Director General of Civil Aviation in Poland, and
8 a focal point for facilitation and security matters in
9 ECAC. ECAC is the European Civil Aviation Conference,
10 and the intergovernmental organization representing 37
11 Member States. I have made available for inclusion in
12 the record of this public hearing a statement on behalf
13 of **ECAC**, and I now wish to emphasize to you a few of
14 the major points of that statement.

15 Firstly, ECAC is convinced that the proposed
16 rule is in the breach of the Chicago Convention. That
17 Convention, and its Annex 17, establish that the Host
18 State is responsible for applying its own aviation
19 security requirements. It also established an
20 obligation to cooperate internationally. This rule,
21 NPRM, would change this obligation of cooperation to an
22 obligation of complying with the U.S. requirements.
23 That cannot be accepted by ECAC.

24 Secondly, we believe that the terms of
25 numerous air service agreements between the U.S. and

1 ECAC Member States required that the both Parties
2 should act in conformity with the Chicago Convention.
3 **Your** proposed rule violates those agreements.

4 My past point, on the later front, is. that,
5 what we see here is an attempt at violating **sovereignty**
6 and territorial authority of **ECAC' s** Member States, and
7 we reject this totally.

a Our rejection of the Hatch rule, it must base
9 solidly on the legal ground. For us, it is requiring
10 to take a line that is inconsistent with the principles
11 of least management. This rule breaches a basic
12 security principle. And these -- identical measures -
13 being imposed on foreign carriers are the most
14 antidiscretion as to how the security risks are to be
15 managed. Thus, anyone, and this hearing, and they
16 already believe that there is only one valid approach
17 to civil aviation security. I believe that -- known.

18 Nevertheless, a logical outcome of this rule
19 would be to insist on the single approach. That could
20 mean that your intended action would actually --
21 security concept designed by sovereign States to
22 counter the threat as they assessed it.

23 I should also remind you that some of the
24 measures by the U.S. side, for example, the passenger
25 profiling, are in fact illegal in some ECAC Member

1 States.

2 ECAC cannot permit the FAA, as a result of
3 this rule, to take on its self responsibility for
4 security matters, which are a matter, in the first
5 place, for ECAC Member States. Not alone is that
6 unacceptable, it makes no sense in **practice**.

7 There is a strong risk that the measure would
a remove any incentive for your partners against
9 international terrorists, and ensure that the adequate
10 measures relative to the risk are applied.- They could
11 simply pass the buck to the FAA. This, ECAC will never
12 accept to do.

13 -- of this measure considered -- the enormous
14 cost involved in what will be a huge loss of slots.
15 ECAC has no doubt that there would be a massive slot
16 reduction, and let me be quite clear, that this would
17 also of course apply to U.S. airlines.

18 In addition, ECAC' s highly developed hub-and-
19 spoke system could be dramatically affected with
20 reduced minimum connecting times. This would affect
21 U.S. and European airlines, but of course, the worst
22 sufferer would be the air passenger. ECAC will be
23 presenting the total cost estimates in its formal
24 response to the Hatch notice.

25 These are just a few of the ideas I wanted to

1 impress on **you** today. They are outlined in more detail
2 in the statement I have made available for inclusion on
3 the record.

4 One final point, before I conclude. Over the
5 years, ECAC has put a lot of effort into the
6 development and extremely close working relationship in
7 the field of civil aviation security with FAA.

8 We believe, as does the FAA, that its **struggle**
9 against international terrorism depends literally on
10 international cooperation. We value our relationship
11 with our colleagues in FAA, and believe that is a
12 risk -- this measure puts at risk this cooperation, and
13 is trying to impose on us against our **U.S.** legislative
14 provisions. I will ask you to think carefully,
15 before -- this approach.

16 We think your approach might well weaken the
17 close cooperation necessary in our joint opposition to
18 aviation terrorism. This can only be a bad thing.
19 Thank you.

20 MS. KLEPPER: Thank you, Mr. Zarembo.
21 Questions or comments? No?

22 MR. ZAREMBA: I gave you the official
23 statement. Thank you.

24 MS. KLEPPER: Our next speaker is Frank
25 Durinckx, Chairman, Security Group, ECAC.

PRESENTATION OF THE
EUROPEAN CIVIL AVIATION CONFERENCE
BY **FRANK DURINCKX:**

Good morning, members of the panel. Good morning, ladies and gentlemen. As you mentioned, my name is Frank Durinckx, and I am Chairman of the ECAC Security Working Group, also Head of Security of the Belgian Civil Aviation Administration, Department of Transportation.

Of course, I do fully subscribe what Mr. Zaremba has been saying, which were principles agreed upon in between 37 European States, the 37 States of the European Civil Aviation Conference, including all the States of the European Union.

I wish to be very short, and I wish to add, or rather focus, to one element, which is the element of international cooperation. Since more than 20 years, ECAC has developed the regional security procedures for the European region, based on the ICAO Annex 17. Those procedures are being agreed upon on a voluntary basis, in between our 37 States.

ECAC thereby always involved the FAA in all stages of its rulemaking. During more than 20 years, the FAA was represented, in all our task forces, all our study groups, and our working group meeting.

1 Unfortunately, this happened on a unilateral basis.
2 **ECAC** never has been involved in the U.S. aviation
3 security rulemaking process,' neither in related
4 meetings. Problems arose in the past, when the FAA
5 unilaterally decided on similar measures to be taken;
6 problems that were, however, discussed on a national
7 basis with the Council, on an international basis with
a ECAC, which led to pragmatic solutions.

9 Up to this point, we could fully cooperate
10 with our colleagues, in the application by them of
11 similar measures. Now, we are facing an entirely
12 different set of circumstances, where, if the Hatch -
13 Amendment were to be implemented, the element of
14 cooperation would be replaced by coercion. We would
15 have no option but to accept whatever the FAA decides,
16 and ensure that our own carriers apply these FAA
17 decisions. I have to tell you, that if this happens,
18 we would have to look very closely at what, up to now,
19 has been a good working relationship with our FAA
20 colleagues, with the emphasis on a cooperative approach
21 to our common enemy, which is international terrorism.
22 Thank you very much.

23 MS. KLEPPER: Thank you, Mr. Durinckx. Any
24 questions or comments? No? Thank you.

25 And our next speaker is Gerry Lumsden.

1 (Discussion was held off-microphone.)

2 MS. KLEPPER: Okay. Thank you, sir. Moving
3 on, then, to our next scheduled speaker, **Sefik Yüksel**,
4 General Manager of Trade Affairs, Association of
5 European Airlines.

6 PRESENTATION OF THE
7 ASSOCIATION OF EUROPEAN AIRLINES
8 BY SEFIK **YÜKSEL**:

9 Thank you, madam, and panel, and we are
10 thankful for the opportunity to address this panel, on
11 behalf of AEA, which represents 27 major scheduled
12 European airlines.

13 The AEA has closely cooperated with ECAC
14 during the preparation for the presentation at this
15 meeting. I will therefore content myself to say that
16 the members of AEA fully support the ECAC intervention.
17 I would then like to emphasize some salient points of
18 importance to our members, and, we believe, to all
19 airlines operating to the United States from European
20 airports.

21 The members of AEA are continuously assessing
22 threats directed at air transport services, and taking
23 the appropriate security countermeasures. In Europe,
24 in addition to baggage passenger reconciliation, long
25 in practice, we will soon be moving to 100 percent

1 whole baggage screening, employing sophisticated X-ray
2 equipment, including CTX, when necessary. Some of our
3 members are already practicing the 100 percent
4 screening and other tight security measures, including
5 passenger profiling, based on their individual threat
6 assessment evaluations. Therefore, we do not see the
7 need to impose identical security measures, with those
8 presently practiced by U.S. airlines, indiscriminately,
9 on all AEA members. In fact, the U.S. proposals are
10 seen by our members more commercial in nature, than
11 being security-oriented.

12 I would like to first point out today that
13 the application of identical security measures
14 at European airports, by both the United States and
15 European carriers, would not bring identical
16 consequences. Far from it! The negative consequences
17 will be more serious for AEA member airlines, operating
18 out of their hub airports in Europe, than for American
19 carriers operating the return leg of their services to
20 the United States from the same airports.

21 American carriers take passengers from
22 airports in Europe to the hub airports in the U.S. for
23 further possible connections. In any one day, an
24 American carrier would typically have a few flights
25 from any given European airport, and the security

1 measures at the trans-Atlantic departure point, however
2 burdensome, would not have consequences on the hub
3 operation in the United States.

4 We in Europe have the reverse of this
5 situation. Numerous incoming flights to our hubs feed
6 outbound flights to many U.S. destinations. Therefore,
7 the entire burden of the security clearance of both the
8 passengers originating from that airport, and the
9 connecting passengers and their baggage, would fall on
10 the European hub. With many connecting arrivals, and
11 trans-Atlantic departures, concentrated within a brief
12 period during the day, the consequences of the proposed
13 security measures could cause the interlying system, at
14 European hubs, to collapse under this strain.

15 To test the truth of this, FAA, or ECAC, for
16 that matter, could request the application of these
17 same security measures by all carriers; from U.S.
18 airports, for trans-Atlantic departures, together with
19 mandatory passenger and baggage reconciliation. In all
20 probability, you would then find a mirror image of the
21 European airlines' position, in the reactions that you
22 would receive from the U.S. carriers. In this context,
23 it would be good to remember, that when a baggage
24 reconciliation system was considered for application in
25 the U.S. some years ago, the U.S. airlines raised

1 strong objections, arguing that reconciliation would
2 destroy their hub system.

3 If you combine the effects of the existing
4 reconciliation requirements in Europe, together with
5 the potential consequences of the FAA-proposed new
6 security measures on operations at a hub airport, you
7 will better understand the dilemma posed by the U.S.
8 proposals for European airlines.

9 This is also where the hidden **consequences** of
10 the proposed measures at hub airports become apparent.
11 The preliminary studies made by some of our member
12 airlines have brought to light the most damaging
13 consequences of the proposed measures, beyond those of
14 providing the necessary money and manpower to put them
15 into operation. These are, firstly, the negative
16 effects from a reduction of slots, and secondly, the
17 necessity to increase minimum connection times, which
18 would lead to missed connections for passengers.

19 As you are hearing in detail from other
20 speakers and colleagues today, it is estimated that
21 many thousands of slots would be lost at airports like
22 London's Heathrow and Gatwick, because passengers could
23 not be processed quickly enough under the proposed
24 security measures. This scenario would be repeated at
25 most major airports in Europe, which do not possess the

1 terminal space necessary to put the proposed measures
2 into practice, for so many flights and passengers
3 during the short period of time when most
4 **trans-Atlantic** services depart for the U.S.

5 Further, in order to share the burden evenly,
6 these slot losses would have to be spread among all
7 airlines, European and U.S., operating on the North
8 Atlantic routes. Given their known scarcity, the loss
9 of slots at European airports is something both
10 European and U.S. airlines can ill afford. I am sure
11 you will agree with AEA on this point.

12 The severe impact of the security checks on-
13 connecting flights is the second hidden consequence of
14 the proposed measures. Since the checks are required
15 to be performed at the trans-Atlantic departure point,
16 the minimum connection times would need to be
17 increased, and in many cases doubled, to allow the
18 necessary time for the connecting passengers profiling
19 and baggage checks. Some of our members, which rely
20 heavily on connecting traffic, have reported the number
21 of passengers who would be unable to use the presently
22 connecting services.

23 For the airports in Austria, Denmark,
24 Ireland, Netherlands, Sweden, and Switzerland, the
25 annual figure would be 261,000 passengers lost. I can

1 project this number to be well over one million
2 passengers in Europe for a year as a whole, when
3 airports in France, U.K., Germany, and others, are also
4 included.

5 Certainly, missed schedules could be partly
6 avoided -if the schedules were rearranged to fit the
7 increased minimum connection times, but then, I would
8 have to give you here instead the consequences from
9 airlines from reduced daily aircraft utilization and
10 crew rotation problems. They may well be even more
11 severe.

12 I would like to add here a word on costs. ~
13 The direct application, including capital investment
14 costs, of the proposed security measures, for ten AEA
15 members who have so far provided preliminary figures,
16 is estimated to be almost equal to the 1.2 billion
17 figure provided by the FAA in the NPRM, for worldwide
18 ten-year total costs. If the indirect costs from slot
19 losses and the revenue losses from passengers' missed
20 connections are added to this, we reach substantially
21 higher figures for Europe, alone. We would therefore
22 propose that the FAA review their cost figures, and
23 draw the appropriate conclusions/consequences.

24 To include, I can say that our principle is
25 that no amount of cost is excessive, when the expenses

1 required to comply with measures absolutely necessary .
2 to ensure the security of airline passengers. But in
3 taking the necessary security measures, we want to
4 match the resources employed directly with the degree
5 of assessed threat. In doing so, we particularly wish
6 to avoid duplicating measures, and thus needlessly
7 increase costs for the airlines and air passengers. We
8 believe that introducing profiling and other security
9 measures identical to those applied by the U.S.
10 airlines, and at the same time administering baggage
11 reconciliation and, very soon, the 100 percent whole
12 baggage screening in Europe, will certainly mean
13 unnecessary duplication, bringing little added value
14 for security.

15 The NPRM has given AIA and its members the
16 opportunity to review the consequences and costs
17 associated with the security measures required by the
18 U.S. Government. Based on this, one can express
19 understanding on the excessive security cost burden
20 borne by the U.S. carriers at airports abroad.
21 Understanding and comprehension, though, do not amount
22 to agreement on our side. A solution must be found to
23 the issue of security, without duplicating efforts, and
24 unnecessarily overburdening the American and European
25 carriers. This is also particularly important, if you

1 want to safeguard the operation of the alliances
2 between U.S. and European airlines, which rely on hubs
3 on both sides of the Atlantic to provide seamless
4 connections and services for their passengers. Any
5 disruption of the functioning of a hub airport in
6 Europe, from the reduction of slots, and increase of
7 minimum connection times, will have seriously damaging
8 consequences for both the U.S. and European airline
9 alliance partners using that airport. The problems
10 being experienced today, at the few hub airports in
11 Europe, in the application of the U.S.-required
12 security measures, to connecting traffic between U.S.-
13 and European alliance problems, could provide ample
14 evidence for the U.S. authorities.

15 The answer to all this is in the hands of the
16 governments, on both sides of the Atlantic. They could
17 jointly frame a set of security measures for common
18 application by U.S. and European carriers operating in
19 the North Atlantic from European airports. Then none
20 of the airlines should have objections to administering
21 identical security measures, based on such a U.S./ECAC
22 agreement. Thank you, Madam Chair.

23 MS. KLEPPER: Thank you, Mr. Yüksel.

24 Questions? Yes, David.

25 MR. TEITELBAUM: You provided some numbers,

1 some preliminary numbers, that, for a number of the
2 countries, if you sum them, I think there was Austria,
3 and Switzerland, and a few others, you would get to a
4 loss of 260,000 passengers that would not be able to
5 fly, and that you projected that to a million lost
6 passengers, and you also were talking about terminal;
7 and you were talking about costs, 1.2 million, and then
8 a billion, and then when you add in the passenger and
9 the terminal, it is over that. And I thank you for
10 those preliminary numbers. And, as I have done with
11 the other speakers, so far, I ask that you include the
12 assumptions that led into this. I know it will be a -
13 little difficult, because you are representing a number
14 of different airlines, and they all work differently.
15 I would ask that you have them go into as much detail,
16 in terms of the differences in how the 1.2 billion came
17 up with the number of passengers, the assumptions that
18 led into them. Again, for everyone who will be
19 speaking, and who has spoken, the more details, and the
20 clearer the assumptions are made, the more useful it
21 will be to the FAA, in reviewing your comments.

22 MR. YÜKSEL: Yes, we will certainly do that.
23 One of them, the minimum connection times, was quite
24 easy. What we did was to take the present minimum
25 connecting investigation, and, if you surpass that by,

1 say, half an hour, what connections you would lose, and
2 automatically, you got the figures for the five or six
3 countries I have given, and we would certainly check
4 these with the others, and provide all the necessary
5 figures.

6 MR. TEITELBAUM: Thank you very much.

7 MR. YÜKSEL: Thank you.

8 MS. KLEPPER: Thank you. Our next scheduled
9 speaker is ^{Philippe}~~Phillipe~~ Gufflet.

10 PRESENTATION OF THE

11 NATIONAL CIVIL AVIATION SECURITY ADVISOR

12 ^{Philippe}
BY ~~PHILLIPE~~ GUFFLET:

13 ^{Philippe}
I am ~~Phillipe~~ Gufflet, Head of Aviation
14 Security Policy, under the authority of the Director
15 General of Civil Aviation in France.

16 It is for me a great honor and a pleasure to
17 speak today on behalf of the French Government, and to
18 draw the attention of the FAA on some comments and
19 observations on the proposed regulation. We thank the
20 FAA for the organization of this meeting, with a thing
21 which we think is of the foremost importance. We hope
22 that our comments will be fully taken into
23 consideration, and will help the FAA in finding an
24 efficient, satisfactory, and non-controversial solution
25 to counter the real threat of terrorists. These

1 comments are delivered in the spirit of sincere,
2 fruitful cooperation, and focused on five concerns.

3 First, it is a common principle in aviation
4 security that the level of security measures has to be
5 suited with the threat assessment. Some statements in
6 the **NPRM** are not in line with this principle.

7 For example, the proposed rule states that
8 the implication, I quote, 'of the Act, is that the
9 terrorist threat to U.S. interests relates not only to
10 U.S. carriers, but also to air carriers of any
11 nationality engaged in commerce with the United
12 States? Unquote.

13 This has historically been proved wrong, for
14 example, when referring to the 1995 situation, when
15 Ramsey Yusef was supposed to target U.S. carriers in
16 the region of Phillippines Islands.

17 Furthermore, FAA intends to define two
18 different regimes of security, Regime A, which would
19 apply to -- region, Southeast Asia, Japan, Australia,
20 and New Zealand, is much less constraining than Regime
21 B, that would apply in particular to Europe,
22 irrespective of threat, and manifestly incoherent with
23 the real threat situation.

24 Lastly, the proposed rule would apply only to
25 foreign airports from which U.S. air carriers operate.

1 It would not apply to foreign routes served by foreign.
2 air carriers, only.

3 These examples show that the modification of
4 the Act is undertaken for commercial reasons, rather
5 than aviation security concerns.

6 The second point, implementation of security
7 measures, identical to those required from U.S.
8 carriers by FAA, would induce utilization of additional
9 space in terminal buildings, solely in application of
10 these measures. Profiling of world percentages leads
11 to a less efficient sharing of checking counters,
12 terminal space, seriously limiting the number of
13 aircraft being processing simultaneously. It may
14 therefore have a negative effect on the number of slots
15 allocated. These create indirect costs which have not
16 been considered in the economical study from the FAA.

17 The cost incentives due to a less efficient
18 use of terminal space and counters, and the increasing
19 average time required to process a flight, have been
20 estimated for both Orly and CDG airports, the passenger
21 traffic loss around 1.4 million in one year, and loss
22 of slots estimated to 7,660, arrival and departure,
23 mixed,.

24 Both effects will create a loss of revenue to
25 the airport operator, and to the airlines.

Furthermore, the hub-and-spokes operation of the international air carrier will be affected by the increased transfer investigation, which will impact on the flight, thus leading to either the modification of flight schedule, or the loss of many possible connections, and consequently, a significant loss of revenue. These losses will affect all airlines operating between France and the USA, and particularly U.S. air carriers which are transporting about half of the passengers between France and U.S.

Third point. The French Ministry of Transport will comply with the ECAC recommendation for 100 percent whole baggage screening, before the 1st of January, 2003. This whole baggage screening will be realized with advanced technology equipments shared and installed in the airport for all airlines, thus making a more efficient and economic way of implementing security measures for whole baggage.

Furthermore, this measure, when applied in all ECAC Member States, will allow the application of the one-stop security concept, which is considered as an essential feature to reduce the connecting time. The consequence of the amendment, which requires that measures be implemented at the last point of departure, will definitely hamper this concept, and have again a

1 negative impact on the traffic fluidity, and occupation
2 of space internal building.

3 Fourth point, a legal point of view. Part of
4 profiling and percentage of selection procedures, as
5 required by FAA regulation, could conflict with
6 national constitutional law, and therefore not be
7 applicable.

8 And finally, on the point of **international**
9 cooperation, the relations between FAA and the-French
10 GGAC, in the field of aviation security, have, in the
11 past, constantly been based on the spirit of
12 cooperation, which is required in accordance with
13 standard 3-22 of ICAO Annex 17. Such cooperation has
14 proved effective. The intention of imposing measures
15 unilaterally, irrespective of the sovereignty of each
16 state with regard to threat assessment, as stated in
17 standard 3-15 of ICAO Annex 17, will endanger this
18 spirit of cooperation, which prevailed until now.

19 In conclusion, most of these points have
20 already been raised in a different way by the previous
21 speakers, but I intended also to emphasize such points
22 for the French Government.

23 MS. KLEPPER: Thank you, Mr. Gufflet. Are
24 there any questions or comments? Yes, David.

25 MR. TEITELBAUM: I sound like a Johnny

1 One-Note, here. You were talking about 7600 slots
2 lost, lost to airlines, lost in connections, that there
3 would be losses at both Orly and Charles de Gaulle
4 Airport, and again, I request that, when you submit
5 your written comments, that again you go through the
6 steps, and what the losses to the airports are, what
7 are the losses to the airlines. Please just don't say,
8 this will result in a million job losses, or a million
9 dollars lost. Please have your people go into the
10 details, and show the assumptions as to all the effects
11 that this proposed legislation would have.

12 MR. GUFFLET: Yes, sir. As the previous
13 speakers, you will understand that we kept all these
14 arguments of breakdown for the written docket.

15 MR. TEITELBAUM: Thank you.

16 MR. GUFFLET: Thank you, sir.

17 MS. KLEPPER: Thank you, sir.

18 By my watch, it is approximately 10:35.

19 I think now would be a good time to take a short break,
20 and we will reconvene at 10:50. If you have not found
21 them already, restrooms are located at the ends of the
22 hallways, and the cafeteria is on the second floor.

23 (Whereupon, at 10:35 a.m., a 15-minute recess
24 was taken.)

25 MS. KLEPPER: We are ready to go back on the

1 record.

2 Our next scheduled speaker is Harry Mayer,
3 Director of Legal Affairs, Ministry of Justice,
4 Netherlands.

5 PRESENTATION OF THE
6 DUTCH MINISTRY OF JUSTICE
7 BY HARRY MAYER:

8 Good morning. My name is Harry Mayer. I am
9 working with the Ministry of Justice. The Ministry of
10 Justice is responsible for security concerning civil
11 aviation and combatting terrorism.

12 The Dutch Government will be in the near
13 future submitting a written response, setting out our
14 objections to this legislation. However, the Dutch
15 Government regarded it as important that I came to
16 Washington, personally. Before I start my
17 presentation, I want to make one thing very clear. Two
18 years ago, I had the privilege to be present at the FAA
19 in Washington, D.C. The opinions expressed by me at
20 that occasion were purely my own. Now, I speak on
21 behalf of the Dutch Government, and therefore my
22 opinions, you will understand, will be more moderate
23 and polite.

24 (Laughter.)

25 MR. MAYER: If I do otherwise, it would be a

1 complicated way of getting dismissed.

2 In the Notice of Proposed Rulemaking, dated
3 November 23, 1998, Docket N° FAA-1998-4758 -- parties
4 are invited to express their objections to the Federal
5 Aviation Administration intention to accept regulation
6 governing the implementation of the so-called Hatch
7 Amendment, in the Antiterrorism and Effective Death
8 Penalty Act. The Dutch Government hereby uses the
9 opportunity to bring its objections to the attention of
10 the American authorities. These objections, detailed
11 below, arise from international law, and are of a
12 financial, economic nature. Attention will also be
13 paid to objections regarding assessment of the threat
14 level.

15 The Dutch Government concludes from
16 abovementioned documents that the Hatch Amendment,
17 proposed to protect American citizens from terrorist
18 attacks on flights to the United States of America,
19 regardless of the nationality of the airlines on which
20 these civilians are flying, foreign airlines are
21 expected to implement security measures to be carried
22 out at the foreign airports of departure. If these
23 security procedures do not meet the American standards
24 laid down in the proposed regulation, sanctions will
25 follow.

1 The proposed regulations will actually be
2 effective, as is its express purpose, within the
3 territorial legal scope of the countries from where
4 flight traffic takes place to the United States of
5 America. For the Netherlands, this would require new,
6 drastic security measures, amongst other things, which
7 would have serious, final implications for the cost per
8 passenger in the Netherlands. The entire security
9 process would in fact be subjected to American
10 regulations with regard to passengers flying to the
11 United States of America. This includes passengers,
12 cargo, and hand luggage control, the execution of
13 profile checks, as well as the inspection of ground
14 staff, with access to departing aircraft.

15 The Dutch Government therefore believed that
16 this legislation has an extra territorial objective,
17 and considered this as unacceptable. The Dutch
18 Government is of the opinion that one of the
19 fundamental principles of international law is that
20 States should respect one another's sovereignty and
21 jurisdiction.

22 The Encyclopedia of Public International Law
23 put it thus. The first is that no State may exercise
24 jurisdiction on the territory of another State, without
25 the latter's consent. This is -- with respect to the

1 jurisdiction to enforce State law.

2 To put it another way, the legislature of a
3 State which attempts to regulate the behavior of
4 non-nationals, outside its own territory, comes up
5 against the preeminent right of every other State to
6 regulate the behavior of persons on its own territory.
7 However, in international 'traffic between States, it is
8 customary to solve problems like these, in the
9 framework of treaties. It is not necessary to
10 underline my words with -- or in green.

11 The Dutch Government would like to stress,
12 therefore, that civil aviation is regulated to a
13 significant degree by the Convention of Chicago, of
14 1944, to which both the United States and the
15 Netherlands are signatories. Article 11 of this
16 convention offers no room for unilateral imposition of
17 security requirements, which should already be met
18 outside the American airspace. The Dutch Government
1 9 attached more importance to the fact the Convention of
20 Chicago assigns the subject of security to the
21 regulating competence of the International Civil
22 Aviation Organization, hereafter ICAO. Article 7 of
23 ~~the~~ Convention focuses on the fact that every State
24 entering into a treaty must cooperate in achieving the
25 greatest possible degree of uniformity in regulations.

1 The Dutch- Government therefore- seriously-doubts that
2 **the** United States of America is authorized to draw up
3 regulations of such far-reaching nature in this field,
4 without any form of negotiation within the framework of
5 the ICAO.

6 It is also convention that aviation security
7 standards are discussed at an international level. The
8 Dutch Government is convinced that the systematic of
9 Annex 17 of the Convention of Chicago means that the
10 ICAO assumes that States can make rules and take
11 measures to guarantee the security. in their own
1 2 territory, only.

13 Finally, the Dutch Government points out the
14 aviation agreement signed between the Netherlands and
15 the United States of April 3, 1957. Security is
16 regulated in Article 9 of the protocol of March 31,
17 1978, to this agreement, lastly amended by protocol
18 dated June 11, 1986.

19 In forming Article 9, the Dutch Government
20 envisioned to reach an optimum level of security, in
21 mutual consultation. For **example**, at the request of
22 the American authorities, the Netherlands strictly
23 **stepped up** its security measures, following empirical
24 data that pointed at the constant increased terrorist
25 threat against American airlines. The Dutch Government

1 would like to emphasize-, in Article 9, paragraph D, of
 2 the aforementioned protocol, the principle has been
 3 laid down that the high contracted parties, in their
 4 mutual relations, shall act in conformity with the
 5 aviation security provisions established by the ICAO,
 6 and designated as an annex to the-convention on
 7 International Civil Aviation. The Dutch Government is
 8 therefore of the opinion that the Hatch Amendment does
 9 not stand for mutual understanding, nor is based on any
 10 reciprocal agreement, and consequently, incompatible
 11 with the objectives, purpose, and content of the
 12 existing aviation convention, as expressed in the
 13 already quoted Article 9, paragraph D.

14 The Dutch Government believes security
 15 measures should always be proportionate to risk chance.
 16 This belief is generally accepted in civil aviation.
 17 It is also practice, that extra security measures,
 18 based on the concrete threat analysis, are taken. The
 19 Dutch Government concludes that the- Hatch Amendment
 20 assumes that the threat for Dutch and other airlines is
 21 exactly the same as it is for American airlines. The
 22 Dutch Government wonders whether the assumption, with
 23 regard to the threat, upon which the Hatch Amendment
 24 relies, is based on the real threat analyses, as far as
 25 the Netherlands are concerned. The Dutch Government

1 believed that abandoning this causal relation between
2 the real threat analysis, and the security measures to
3 be taken, promotes a particularly undesirable element.

4 The full introduction of the Hatch Amendment,
5 at Schiphol Airport, will have the following
6 operational and financial consequences-for the
7 Netherlands. There are currently twelve airlines which
8 together carry out 8,600 flies **between** Schiphol,
9 Amsterdam Airport, and the United States. These twelve
10 airlines include four American airlines, **which** are
11 treated as high-risk airlines by the Dutch Government
12 at Schiphol. The other airlines, including -- KLM, ---
13 total of 5,100 flights in 1998, are treated as standard
14 security. The Hatch Amendment would apply to the
15 latter flights. This justifies the conclusion that, in
16 addition to the flights of the four American airlines,
17 the Hatch Amendment would apply to 5,100 additional
18 flights, each year. The total cost to Amsterdam
19 Airport would rise to about 2-1/2 times the present
20 cost, or about \$5 million a year. Additional costs
21 would include costs for stuff, development of the Royal
22 Military Police, secure and project international,
23 private security companies, who are doing the profile
24 checks and aircraft checks under supervision of the
25 Royal Military Police. These costs would amount to

1 \$15 million per year.

2 The introduction of the amendment would also
3 undoubtedly affect the business operations of Schiphol.
4 It will mean the purchase of additional EDS equipment
5 for checking the cargo. Also required would be at
6 least 30 square meters additional room in terminals or
7 at gates. This would lead to a highly critical
8 pressure on already stretched capacity. In addition,
9 under the agreements made at the European Civil
10 Aviation Conference, ECAC, the Netherlands **must** meet
11 the obligation to check the entire hold luggage, as per
12 the 1st of January, 2003. In order to realize this, -
13 far-reaching adaptations of the luggage system are
14 required.

15 The additional, aforementioned measures
16 resulting from the Hatch Amendment obstruct the
17 structural adaptations and will lead to unnecessary
18 extra costs. Introduction of the measures prescribed
19 by the Hatch Amendment would lead to an unacceptable
20 pressure on the capacity and the occupation level of
21 the luggage system, and basement for Amsterdam Airport,
22 Schiphol.

23 Schiphol Airport has many transfer
24 passengers, around 40 percent. The extra measures
25 under the Hatch Amendment would mean that the minimum

1 connecting times of airlines which come under
2 increasing pressure, which would have a negative effect
3 on the quality of the total airport process. An
4 example is the loss of slots, and vis-a-vis these
5 passengers. Furthermore, airlines leaving from
6 Schiphol Airport destined for the United States will
7 have to take extra measures, including security
8 aircraft, together with extra measures in the field of
9 checking cargo and catering. Roughly speaking, the
10 total cost for these airlines will amount to around
11 \$40 million, on a yearly basis.

12 In conclusion, the Dutch Government would .
13 like to stipulate that the regulation the Hatch
14 Amendment has in view has not been realized, as is
15 customarily the case, internationally, in consultation
16 between two sovereign states, and is incompatible with
17 current airline convention between the United States
18 and the Netherlands; that this amendment, this Hatch
19 Amendment, finds absolutely no justification in any
20 realistic threat analysis; and that its introduction
21 causes disproportional disturbance of the air traffic
22 between both countries.

23 . Thank you for listening. I am willing to
24 answer questions, and I promise that I will try to do
25 my best that the answers will be in relation to your

1 questions.

2 MS. KLEPPER: Thank you, Mr. Mayer. Are
3 there any questions or comments? Yes, David.

4 MR. TEITELBAUM: Yes. I wanted to thank you
5 for giving the numbers that you gave. Forgive me for
6 not looking at you. It is hard to talk into the
7 microphone and look at you at the same time.

8 You mentioned that the costs, some of the
9 costs would go up, 2-1/2 times, and you mentioned a
10 5 million dollar, you mentioned a 15 million dollar,
11 you talked about costs for police, private security.

12 MR. MAYER: Yes.

13 MR. TEITELBAUM: Then in addition, you talked
14 about more room. You would have to get more EDS.

15 Again, I ask, in your written comments, that
16 you document each of these as carefully as you can,
17 saying that, like, it would take, we need more four
18 more police people per corridor, at such-and-such a
19 cost per hour. The private security would cost this.
20 The EDS would cost this. The additional room would
21 cost that. The more details, again, that you can give,
22 the better.

23 MR. MAYER: Yes. I will do my utmost.
24 I have to say, in the Netherlands, we are working for
25 the Americans, and we do it from a government side. In

1 other countries, the airlines has to do it, themselves,
2 what we would do, but it is, in my opinion, it is not
3 so very decisive, if you come up with that it is, it
4 costs 15.5 million, or 14.8, or 16.5. It is going to
5 be, first, it is a question of infringement of our
6 sovereignty. Second, the most important, in my
7 opinion, the threat. The threat should be decisive.
8 If you have your record of your GOT, it is also the
9 threat decisive. If the Americans say, we do not, in
10 America, because the threat is in Europe and the Middle
11 East, they are right, if it is so, if the threat is.
12 But if the threat is less, less, than it is okay. But
13 the opposite is also that we do more -- because the
14 threat is high -- that is obvious. And the third are
15 financial, and make a lot of problems, but in the
16 end -- for example, a profile check is impossible to
17 do. If you do a serious profile check, you cannot
18 add -- flights, and leave extra for a profile check,
19 particularly -- for people flying -- to America. That
20 is impossible if you do that -- a kind of -- just the
21 opposite --

22 But I will -- come with more detail, but the
23 distinction, and my -- Royal Military Police --
24 security -- is not mentioned. You know what these
25 people cost. And then, and then -- was the -- of

1 losing slots, and things like that. That, that, maybe
2 we can make more specific. I will do my utmost. Thank
3 you.

4 MR. TEITELBAUM: Thank you very much.

5 MS. KLEPPER: Thank you, Mr. Mayer.

6 Our next speaker is Katsuhiro Yamaguchi,
7 Japan Ministry of Transport, Civil Aviation Bureau.

8 PRESENTATION OF THE

9 JAPAN MINISTRY OF TRANSPORT

10 CIVIL AVIATION BUREAU

11 BY KATSUHIRO YAMAGUCHI:

12 Good morning, ladies and gentlemen. I am
13 representing the Civil Aviation Bureau of Japan, which
14 is in charge of civil aviation policy, in general, and
15 I have come to present the statement today on the FAA's
16 NPRM.

17 I am grateful for the opportunity to make
18 this statement, and before entering into the substance,
19 I would like to take this opportunity to extend our
20 gratitude to the considerable effort made by
21 Administrator Garvey and other members of the FAA, to
22 lead the annual conference held between the two
23 authorities here in Washington, in January, to great
24 success.

25 The significance of civil aviation's role, to

1 facilitate international society and global economy, is
2 growing, and so is the importance of dialogue between
3 aeronautical authorities across borders. I am sure
4 that FAA would share the view that mutual cooperation
5 is indispensable to the development of international
6 aviation. The Civil Aviation Bureau of Japan is
7 therefore confused that the U.S. Government has, on the
8 - - contrary, chosen to impose identical security measures
9 through unilateral rulemaking, and not through mutual
10 -coordination.

11 I would again like to thank the FAA for
12 organizing the hearing, today, but I will have to add
13 that it is quite regrettable that I am not in Tokyo or
14 Montreal to greet the members of the panel, to discuss
15 this issue.

16 Now, I would like to move on to the
17 substance. There is grave concern over the FAA's
18 proposal in the Civil Aviation Bureau of Japan, and I
19 am here to call upon the U.S. Government to reconsider
20 implementation of the proposed rule.

21 It is clear that imposition of the proposed
22 rule would not only be detrimental to a good
23 relationship, cultivated through the years, but also be
24 unacceptable, for practical and legal reasons. First,
25 the endeavor to suppress acts of unlawful interference

1 against international civil aviation has been of prime'
2 importance for Civil Aviation Bureau of **Japan**, and we
3 have been effectively implementing a comprehensive
4 security program to this end. We believe that current
5 measures implemented in Japanese airports are
6 sufficient enough, and, in certain aspects, more
7 exhaustive than those implemented in airports in the
8 United States.

9 Those who have visited Tokyo may have noticed
10 that, in Narita Airport, not only the ID's or the
11 tickets of passengers and personnel who work at the
12 airport, but also those of anybody who is **approaching**
13 the airport, for instance, seeing off or welcoming
14 passengers at the airport, are checked. And unlike in
15 U.S. airports, entry into the boarding area is limited
16 only to passengers and relevant staff.

17 There are other measures that are not
18 implemented in U.S., details of which shall not be
19 commented in public, due to their sensitive nature.

20 Therefore, although we do not implement
21 measures identical to those in U.S. airports, we
22 believe the security program is adequate and
23 sufficient. And we do acknowledge that there is a
24 number of approaches to suppress acts of unlawful
25 interference, depending on the level, and the nature of

1 the risk, and the environment of the airport, but
2 measures are usually systemized in terms of hardware
3 and software, in each of the approaches. Piecemeal
4 changes would **have adverse** effects on the effectiveness
5 of the program, as a whole, and would have negative
6 impact-on smooth flow of passengers. FAA's proposal
7 would therefore impose inappropriate and inefficient
8 security measures, not only on Civil Aviation Bureau of
9 Japan, but also on air carriers, including the six --
10 carriers-providing service between Japan and the United
11 States.

12 Furthermore, recent development in bilateral
13 air talks between Japan and the United States have
14 opened opportunity for new airlines, and cleared the
15 way for alliances between air carriers in the Japan/
16 U.S. market. Inappropriate and inefficient techniques
17 in the management of aviation security risks would lead
18 to excessive and unacceptable cost burdens on air
19 carriers, including those of the United States, as well
20 as on the Civil Aviation Bureau of Japan. They will
21 seriously damage efforts by the airlines, and would
22 undermine the benefits of new opportunities provided
23 under the new regime. Remember that two-thirds of the
24 passengers traveling on Japan/U.S. routes are currently
25 transported by the U.S. air carriers.

1 Second, since **FAA's** proposal would require
2 other nations to take identical security measures
3 within their territory, it is clear that such a rule
4 will lead to conflict with laws and regulations set out
5 as an exercise of sovereignty of that nation. Such a
6 rule, with explicit extraterritorial effect, cannot be
7 accepted.

8 One needs to contemplate the **implications**, if
9 Japan required the nineteen airports in the **United**
10 States that are currently serving as gateways to Tokyo,
11 to implement security measures identical to those of
12 Narita Airport.

13 Third, under the articles of the Annex 17 of
14 Chicago Convention, each contracting party is
15 responsible for requiring air carriers providing
16 service from that State to implement appropriate
17 security programs. The provision is aimed not only to
18 prevent contracting States to take actions that would
19 conflict with exercise of sovereignty of other nations,
20 but also to avoid immense difficulties which would be
21 placed on airlines, should they be required to adhere
22 to different security requirements, in the same
23 airports. The multilateral framework of the Chicago
24 Convention system should be utilized to ensure
25 implementation of appropriate security measures.

1 Fourth, FAA is claiming that this rule is an
2 exercise of authority recognized in U.S. air transport
3 agreements. However, there is no provision in Japan/
4 U.S. bilateral air agreement that could justify FAA's
5 view.

6 Based on these reasons, we request the U.S.
7 Government to redraw its proposal that imposes
8 identical security measures on other nations, including
9 Japan.

10 I would-like to conclude my statement by
11 adding that the official document, including the cost
12 implication figures from the Civil Aviation Bureau, -
13 shall be sent subsequently. Thank you very much for
14 listening. -

15 MS. KLEPPER: Thank you, Mr. Yamaguchi. Any
16 questions or comments? None? Thank you.

17 Our next speaker is David Plavin, President
18 of Airports Council International.

19 PRESENTATION OF THE
20 AIRPORTS COUNCIL INTERNATIONAL
21 NORTH AMERICAN REGION

22 BY DAVID PLAVIN:

23 Good morning, ladies and gentlemen, and thank
24 you for the opportunity to speak before this session,
25 today. I have with me, today, my colleague, which is

1 chairman of **ACI** Worldwide, and he will speak to us in a
2 few moments, but allow me to introduce the testimony
3 that we have prepared for the record with a few
4 observations about who **ACI** is, and what it is that we
5 have done to prepare this testimony.

6 **ACI** is a worldwide organization of airports.
7 We represent some 1200 airports around the world. I am
8 President of **ACI** North America, the largest of six
9 regions of **ACI**. We are the organization that is, to
10 put it directly, the voice of airports, and we believe
11 that these measures really are not sensible in today's
12 environment.

13 We got together as a group of **ACI** airports,
14 to try to understand the implications of the rule that
15 is before us. The comments that we have put together,
16 therefore, represent the consensus of airports,
17 literally around the world.

18 We have a view, for example, that the
19 measures proposed are counterproductive, that they are
20 counterproductive because they will invite additional
21 layers of rules and regulations, retaliation, and
22 related kinds of issues that cannot be in the interest
23 of American civil aviation, and the passengers who fly.
24 We believe that they are damaging, because they impose
25 costs, and because they impose delays on the system,

1 which are also not in the interest of either American
2 passengers or of passengers around the world. And we
3 believe that they are unnecessary, because **FAA** has the
4 **tools**, and uses the **tools**, to ensure, today, that there
5 are effective means of securing a passenger, all around
6 the world. They do not need the rule that is being
7 proposed, or the law on which it is based.

8 Therefore, we have no choice but to conclude
9 that this is economic regulation, and not security
10 regulation. We have no choice but to conclude that the
11 kind of expenses being imposed on airports around the
12 world, today, and on U.S. airports in the future,
13 cannot be said to contribute in any meaningful way to
14 the security of passengers.

15 So, with that, I would like to introduce the
16 chairman of the Aeroport de Paris, the Paris Airports
17 Authority, who is this **year's chairman** of **ACI**
18 Worldwide, a former chief of staff of the French Air
19 Force, and who has made a particular trip to the U.S.
20 to indicate just how strongly the airports around the
21 world feel about this measure, which, as I said, cannot
22 be seen to be in the interest of the security of
23 passengers around the world. Let me introduce General
24 Fleury.

1 PRESENTATION OF THE
2 AIRPORTS COUNCIL INTERNATIONAL
3 WORLD HEADQUARTERS

4 BY JEAN FLEURY:

5 Good morning, ladies and gentlemen. ACI, and
6 its member airports, appreciate-the opportunity to
7 comment to the **NPRM**. I address a written statement,
8 that I will not read, of course- but I only present an
9 executive summary.

10 The stated purpose of the proposed rule is
11 'increase the safety and security of passengers aboard
12 foreign air carriers on flights to and from the United
13 **States,**' which should be supported by all members of
14 our community. But we think that the proposed rule
15 will not produce this result. Security measures should
16 be aimed at reducing risk by persons intending harm,
17 and must be based on a threat assessment for each
18 affected airport and airline. They should not be
19 implemented for economic or competitive reasons.

20 The proposed rule and its underlying
21 legislation raise legitimate questions of
22 extraterritoriality, or conflict with national laws.
23 However, since this is a matter within the competency
24 of States, **ACI** will not address it.

25 The proposed rule will further reduce or

1 limit capacity at the airports which today are
2 constrained. In many terminals, we do not have room
3 enough to locate X-ray equipment, and passengers
4 waiting for screening. Furthermore, profiling takes
5 more time, and requires more boarding desks.

6 Through the proposed rule will-decrease the
7 capacity of terminals, and many airports will not be
8 able to feed the demand. Slots **will be** lost, and
9 losses shared by airlines.

10 The economic costs to both airports and
11 airlines will far exceed the estimate made by the FAA.
12 Direct costs to U.S. citizens using foreign carriers as
13 well as utilizing United States flag carriers will
14 rise. A more detailed analysis of the adverse economic
15 and capacity implications for specific airports is
16 included in the appendix to my submission that I have
17 given already to you.

18 The proposed rule could be detrimental to
19 existing levels of security, which, in many cases, are
20 much higher, with more effective equipment. Confusion
21 could arise over which measures should be implemented
22 within the **airpore** since they would not be imposed on
23 flights to destinations outside of the United States.

24 The proposal will frustrate the efforts by
25 ICAO to establish international security standards

1 through Annex 17. The FAA has frequently recognized
2 the harm accomplished by fragmentation of global
3 standards.

4 ACI believes these problems can be avoided by
5 using an 'equivalency' standard in approving a foreign
6 air carrier security plan- This is well within the
7 discretion allowed FAA by the legislation and follows
a the common 'equivalent level of safety" methodology
9 used in FAA's other safety certification programs.

10 And lastly, we suggest again that security
11 measures should be relative to a threat assessment of a
12 given carrier and given country. Thank you for your
13 attention.

14 MS. KLEPPER: Thank you, Mr. Fleury.
15 Questions or comments? Yes, Michael.

16 MR. CHASE: Just one question. Did I hear
17 you say you thought that, under the legislation, that
18 there was discretion to provide an equivalent, as
19 opposed to an identical level of security? That is
20 your conclusion?

21 GEN. FLEURY: Yes. As far as we know, we
22 have exchanged, and we work for certification of
23 aircraft together, and the rules are to have equivalent
24 level, not quite identical. And that is why something,
25 we think, could be done.

1 VOICE: Mr. Chase, I think the reference is
2 to existing statute -- to the former statute, not to
3 the statute as it is proposed.

4 MR. CHASE: Okay. So the issue of discretion
5 is not being asserted with respect to the current
6 legislation. Thank you,

7 MR. TEITELBAUM: I have got several questions
8 on the full submission, including the appendix, that I
9 believe you submitted. I want to thank you for going
10 into the details with direct and indirect cost in terms
11 of tax revenues, loss of capacity, and then you
12 mentioned things with London-Heathrow, London-Gatwick;
13 Vienna, Amsterdam, Frankfurt, and a number of others.
14 This is a good first step in detailing for us the
15 number of slots that would be lost, and the cost of
16 this, and the cost of that.

17 As I have said before, we need more details
18 to claim that, or to say that additional costs would be
19 21 million here, or 85 connections there. That is a
20 number that floats out there, which, by itself, we
21 cannot do all that much with. Again, I need the
22 assumptions behind why it would cost 21 million, why
23 you would have 15,000 less flights, or whatever, broken
24 down into as many details as possible, and as I have
25 been stressing, all morning, the more details we have,

1 the more we will be able to use- the numbers in adding.
2 to it.

3 You say here, the economic cost to both
4 airports and airlines will far exceed the estimate made
5 by the FAA. That is very possible. In an NPRM, we
6 make our first, best estimate based-on the information
7 we have. The comment period and listening sessions are
8 for the regulated parties to provide us with additional
9 information. We do not know everything. Oftentimes we
10 just make estimates based on our best information. The
11 more exact information that we get, the better our
12 final estimates of the costs can be. So I thank you -
13 for what you have already provided, and I look forward
14 to the additional information.

15 GEN. FLEURY: Okay. Yes, of course. We are
16 all working in the same way, and I fully agree, and of
17 course, this is a summary, and we will give the exact
18 information, and demonstration, I should say.

19 MR. TEITELBAUM: Thank you very much.

20 MS. KLEPPER: Thank you, sir.

21 Our next scheduled speaker is William Karas,
22 Counsel for Japan Airlines.

PRESENTATION OF THE
JAPAN AIRLINES CO., LTD.

BY WILLIAM **KARAS**:

Good morning. My name is Bill Karas. I am with the law firm of **Steptoe & Johnson**, attorneys to Japan Airlines (**JAL**).

Japan Airlines appreciates the opportunity to present its views, briefly, on the NPRM at this public meeting. As applicable to JAL flights from any one of the eight Japanese airports it utilizes on routes to the U.S., the rule would require **JAL** to adopt and comply with security measures dictated by the U.S. Government through the FAA; such security measures would have to be identical to the measures that the **FAA** requires U.S. carriers to adhere to when operating out of any such airport.

JAL believes that rules regarding aviation security measures to be followed by airlines operating from a particular airport anywhere in the world can be validly promulgated in only one of three possible ways: (1) by the authorities of the nation in which the airport is located (that is, the host State); (2) by the authorities of a particular carrier's homeland (the State of registry), but only with the acquiescence of the host State; or (3) by virtue of an agreement

1 between or among nations. The rule proposed by the
2 FAA, however, meets none of these three tests. Rather,
3 the FAA is following a fourth way, under which a State,
4 being neither a host State nor a State of registry,
5 would dictate aviation security rules not authorized by
6 any international agreement.

7 Japan Airlines respectfully submits that it
8 is a violation of the territorial sovereignty of Japan
9 for the U.S. Government to dictate security
10 requirements for airports in Japan applicable to
11 Japanese carriers and their flights to the U.S.
12 Territorial sovereignty is a cornerstone of
13 international law. One nation of course cannot make
14 rules applicable within the territory of another State.
15 While purports to be respectful of the sovereignty of
16 other nations, there is nothing to suggest that Japan
17 has surrendered its sovereignty regarding aviation
18 security procedures that take place on Japanese soil.
19 And here I should emphasize what Mr. Yamaguchi already
20 said, and that is that the air services agreement
21 between Japan and the U.S. does not address the subject
22 of aviation security.

23 With the exception of the Hatch Amendment,
24 certain provisions of the U.S. Aviation Code recognize
25 that the U.S. Government should not unilaterally make

1 U.S. laws applicable in another nation's territory.

2 For example, § 40120(b) establishes two criteria for
3 the United States President to extend the application
4 of Aviation Code provisions to places outside U.S.
5 territory. Those two criteria are: an international
6 agreement must give the U.S. Government authority to
7 make the extension and the President must decide that
8 the extension is in the national interest. Both
9 criteria must be met, but in this case neither has.

10 The Chicago Convention is the basic document
11 of course governing the conduct of international civil
12 aviation. Its purpose was, and still is, to avoid
13 chaos and confusion through commonly-agreed rules
14 consistent with territorial sovereignty. The head of
15 the U.S. delegation to the Chicago Conference in 1944,
16 Adolph Berle, set forth the view of the United States.
17 He said, and I quote, 'Without prejudice to full rights
18 of sovereignty, we should work upon the basis of
19 exchange of needed privileges and permissions which
20 friendly nations have a right to expect from each
21 other."

22 The Convention addresses aviation security in
23 detail in Annex 17. That document is absolutely clear
24 that the host State is in charge of aviation security
25 on its own soil. For example, Clause 3.1.18 states:

1 **"Each Contracting State shall** require--operators
2 **providing service** from that State to implement a
3 **security** programme appropriate to meet the requirements
4 of the national civil aviation security programme of
5 that State.' In other words, in this context, the
6 Government of Japan is the only nation empowered by the
7 Convention to impose aviation security requirements on
a airlines departing from Japan.

9 The FAA's proposed rule obviously contravenes
10 the host-state rationale of Annex 17, as well as the
11 principle of territorial sovereignty announced in the
12 very first article of the Convention. If each state of
13 first arrival were to dictate security measures to be
14 followed by JAL in its own country, not only would the
15 authority of Japan (the host State) be completely
16 supplanted, but at its eight Japanese gateways JAL
17 might have to comply with any number of different and
18 perhaps inconsistent security programs, depending on
19 the destination of each flight. Moreover, under the
20 FAA's theory of jurisdiction, the Government of Japan
21 would be able to dictate to United Airlines, for
22 example, the security measures that United would need
23 to adopt at O'Hare for flights to Japan. The framers
24 of the Convention would have been appalled by these
25 possibilities.

1 . And now-I turn to the issue of risk-
2 **assessment**. Aviation security is a very serious matter
3 **which** JAL takes just as seriously as anyone else.
4 Appropriate and effective security measures should be
5 discussed and developed in a cooperative framework
6 outside any public forum, and should not be
7 unilaterally declared by a non-host State in a legal
8 proceeding outside the host State. Moreover, adequate
9 security measures must be tailored to the risks
10 involved for particular flights, depending on a variety
11 of factors (the particular destination, nature of the
12 passengers on board individually and collectively,
13 nationality of the carrier, et cetera), as well as on
14 other information gathered by or filtered through the
15 host State's intelligence apparatus.

16 The FAA's proposed requirement for foreign
17 airline security measures identical to U.S. airline
18 security measures is a very blunt instrument that does
19 not take into account the nuances and changing
20 character of aviation security risks for appropriate
21 flights of particular carriers at particular airports.
22 Consequently, the proposed rule's arbitrary and
23 **inflexible** "identical" standard -- at least as it would
24 apply in the various Japanese airports served by JAL on
25 flights to the U.S. -- is highly inefficient for

1 **dealing with security risks in the manner envisaged by**
2 **the Convention:** that is, without loss of 'the
3 advantage of speed inherent in air transport." That
4 phrase, of 'the advantage of speed inherent in air
5 transport,' is found in Annex 9 to the Convention,
6 which is an attachment to Annex 17, and relates
7 specifically to aviation security procedures. Not
8 surprisingly, such inefficiency will mean that Japanese
9 carriers and Japanese airports will unnecessarily incur
10 increased costs. The only proper function of security,
11 rules is the adequate protection of aviation according
12 to the risks involved; equalization of cost burdens **is** .
13 an improper purpose.

14 The proposed rule would also result in an
15 increased cost burden on JAL operations from U.S.
16 airports. By requiring foreign carriers to adhere to
17 security measures identical to those required of U.S.
18 carriers at U.S. airports, JAL would have to bear
19 significantly greater costs for no valid **security-**
20 related purpose. Again, cost equalization is not a
21 valid concern for the FAA, in the judgment of JAL. To
22 cite just one example: implementation of the proposed
23 rule would possibly require JAL to have Ground Security
24 Coordinators at each of its U.S. stations. That costly
25 requirement would not yield a discernible measure of

1 increased security. Besides, a requirement for Ground .
2 Security Coordinators at U.S. airports will be more
3 costly to JAL than its U.S. competitors since U.S.
4 airlines have very many more flights at U.S. gateways
5 over which to spread the cost of Ground Security
6 Coordinators.

7 It is JAL's view that to the extent that
8 there is any perceived shortcoming of security measures
9 applicable to Japanese airlines at airports in Japan,
10 the U.S., or elsewhere, that matter should be taken up
11 with, and addressed at, the International Civil
12 Aviation Organization (ICAO), which is the
13 internationally designated body charged with the
14 establishment of aviation security standards and
15 recommendations. Indeed, Annex 17 is the product of
16 ICAO discussions, deliberations and decisions. ICAO is
17 the appropriate non-public vehicle for further
18 discussions on aviation security, not an FAA rulemaking
19 proceeding to adopt an unyielding "identical" standard
20 without regard to risk assessment.

21 Finally, I should say that, from the dawn of
22 aviation, the U.S. has been a leader in the formulation
23 of the principles which govern and support the
24 remarkably effective and harmonious global civil
25 aviation regime. Japan Airlines urges the U.S.

1 Government (including Congress and the FAA) to again
2 demonstrate its leadership position by adhering to
3 (a) the rule of law regarding territorial jurisdiction
4 and (b) ICAO procedures for compliance with Annex 17 of
5 the Chicago Convention.

6 Thank you for your attention.

7 MS. KLEPPER: Thank you, Mr. Karas.

8 Questions? Comments? Michael.

9 MR. CHASE: Just one question. You
10 characterized the rule as arbitrary and inflexible, in
11 establishing the identical standard. That standard of
12 course is derived from the statutory language. Do you
13 believe it is possible to implement this statute,
14 consistent with the arguments you raise in your
15 testimony?

16 MR. KARAS: Well, I recognize that this
17 gathering is much too little, and much too late. And
18 we have all these people from all over the world coming
19 here to discuss a rule, which parrots the Act,
20 verbatim. The time for doing all this should have been
21 much, much earlier, before the legislation was passed,
22 and certainly, JAL recognizes that we are all in kind
23 of a box, where there is no good exit, save a change in
24 course that would have to take place in the U.S.
25 Congress.

1 Now, there might very well be some
2 flexibility on the part of the FAA, and you will have
3 to consider that, in view of all the comments that have
4 been received, but I should say that, security is a
5 very serious matter, a very serious matter to this
6 agency , and to ECAC, and to the Civil Aviation Bureau
7 of Japan, and elsewhere. It should be left to
8 professionals. s

9 What we have here is an act that was put
10 together by politicians and lobbyists, and awful good
11 lawyers. But this is not the provence, it is such a
12 serious matter, it should not be the provence of
13 lobbyists and lawyers, it should be the provence of
14 security professionals who can talk to each other in a
15 non-public forum about these things, under the auspices
16 of ICAO or whatever other multilateral organization is,
17 well, ICAO is the only one that comes to mind.

18 So, the short answer to your question is, we
19 certainly realize that there are limits to how much
20 discretion the FAA has, given the statute. What that
21 means, however, is that the FAA ought to take the
22 message that they are hearing, here today, and on March
23 23, take that to Congress, and to say to Congress,
24 look, this is a very, very serious matter. It is going
25 to have economic consequences for U.S. airlines, for

1 hub operations in Europe, and the United States, and
2 elsewhere, and certainly in Japan. It is going to
3 result in a loss of slots, and it is going, you know,
4 all these things that you did not foresee. And please
5 reconsider, and perhaps everyone can live with what was
6 the legislation prior to the Hatch Amendment, which is
7 the current FAA regime.

8 So, sorry for the long-winded answer.

9 MS. KLEPPER: Thank you very much.

10 Our next scheduled speaker is Michael
11 Goldman, U.S. Counsel for Scandinavian Airline System.

12 PRESENTATION OF THE

13 SCANDINAVIAN AIRLINE SYSTEM

14 BY MICHAEL GOLDMAN:

15 Good morning. My name is Michael Goldman.
16 I am appearing today as the U.S. counsel for
17 Scandinavian Airline System (SAS). SAS is the flag
18 carrier of the three Scandinavian countries, Denmark,
19 Norway, and Sweden. SAS appreciates the opportunity to
20 present its views today on the FAA's proposal to
21 implement the so-called Hatch Amendment, and require
22 foreign air carriers to adopt security programs that
23 adhere to the identical security measures required of
24 U.S. carriers.

25 SAS joins the other foreign air carriers,

1 foreign governments, and associations testifying today
2 in voicing strong opposition to the FAA's proposal.
3 SAS' s opposition is based on both legal and operational
4 considerations.

5 On the operational side, imposing the
6 identical security program requirements on SAS will
7 require SAS to extend its minimum connect times at our
8 European hub airports, costing SAS millions of dollars,
9 numbers that I will address for Mr. Teitelbaum's
10 benefit, today.

11 (Laughter.)

12 MR. TEITELBAUM: Thank you.

13 MR. GOLDMAN: As a legal matter, SAS also
14 believes that the proposed rule would violate the
15 Chicago Convention, and provisions of the
16 U.S./Scandinavian bilateral air transport agreements.
17 I will address each of these grounds in more detail,
18 today. SAS needs to state at the outset, however, its
19 view, that the Hatch Amendment and this rulemaking are
20 not about passenger safety or passenger security.
21 Imposition of U.S. security requirements on foreign air
22 carriers will not make international flying safer, or
23 strike a blow against international terrorism.

24 SAS, in cooperation with Scandinavian
25 Aeronautical, and police authorities, implements

1 security measures that make our flights among the
2 safest in the world. They are safe for Scandinavians.
3 They are safe for Americans. Efforts to implement the
4 . Hatch Amendment will not make them any safer.

5 The disagreement we have with U.S.
6 authorities concerns how to assess the level of the
7 security threat for non-U.S. airlines, and the most
8 appropriate measures for combatting that level of
9 threat. We do not question the FAA's authority to
10 determine the threat level for U.S. airlines, but the
11 **kneejerk** reaction that what is good for U.S. carriers,
12 is good for non-U.S. carriers, is a conclusion we
13 cannot accept. We believe Scandinavian authorities are
14 in the best position to determine the level of threat
15 directed against SAS, especially at airports located in
16 the Scandinavian countries. Frankly, the threat level
17 may be greater for U.S. carriers, but that does not
18 mean that the measures taken by Scandinavian
19 authorities, and that will be taken in the future, are
20 not appropriate to the threat faced by SAS.

21 Reasonable security experts, as you have
22 heard this morning, can also differ on the best
23 measures to deter security threats. U.S. authorities
24 have decided that passenger profiling is of great
25 value, while European, including Scandinavian

1 authorities, have given greater prominence to a
2 positive passenger-baggage match requirement. The
3 emphasis on different measures reflects both the
4 different threat assessments, and the differing
5 industry infrastructure of Europe, compared with the
6 United States.

7 To cite one example, imposition of the
8 European positive passenger baggage match requirement
9 for U.S. domestic flights would force dramatic, perhaps
10 chaotic changes in the hub-and-spoke systems operated
11 by major domestic U.S. carriers today. It would
12 probably delay flights, and increase airport
13 congestion, That this requirement is in effect on
14 intra-European flights does not mean that the U.S.
15 domestic system is any less safe, without it.

16 SAS' s U.S. operations consist of daily
17 flights from its Scandinavian hub airports, Copenhagen,
18 Stockholm, and Oslo, to Newark, Chicago, and Seattle.
19 With three European departure airports, the impact of
20 the additional and identical security program rule on
21 SAS could be both complicated and pervasive. SAS must
22 therefore seek clarification from the FAA, immediately,
23 as to the potential scope of the FAA's proposal on
24 SAS' s operations. The Notice of Proposed Rulemaking
25 states that, to implement the new requirement under

1 Part 129.25(e), FAA will review and update the security
2 requirements that need to be levied on U.S. carriers,
3 and the **FAA** will then impose identical security
4 measures on foreign carriers flying from those
5 airports, as last departure points to the United
6 States. **SAS'**s question is whether the identical
7 security program requirement would apply only to
8 Stockholm, which is the only Scandinavian airport that
9 is also served by U.S. carriers, as the last point of
10 departure to the United States, today. While SAS also
11 operates U.S. flights from Oslo and Copenhagen, there
12 are no U.S. carriers on these routes, today. Indeed,
13 how the FAA would determine requirements at foreign
14 airports applicable to non-U.S. carriers, when such
15 airports are not served by U.S. carriers, is not
16 addressed at all by the **NPRM**. SAS urges the FAA to
17 address this question of the proposed rule's
18 application to the SAS operations, at its earliest
19 opportunity.

20 Assuming however that the proposed rule would
21 apply to SAS operations at all three Scandinavian
22 airports, the cost of compliance for SAS would be
23 enormous. SAS estimates the annual cost of the
24 operational changes required to be \$33.1 million U.S.,
25 annually. Much of the cost estimate reflects lost

1 revenues resulting from implementation of the passenger
2 profiling requirement. Profiling will result, as many
3 have pointed out already this morning, in longer
4 minimum connect times at SAS hub airports, because more
5 time will be needed to intercept transfer flights at
6 the SAS hub airports, and interview each, before
7 boarding, as well as interviewing those passengers
8 originating at the departure city. This is a much
9 bigger problem for European carriers such as SAS, than
10 U.S. carriers, because a much higher percentage of our
11 trans-Atlantic traffic consists of passengers
12 connecting at the European hub airport. For SAS, this
13 is in excess of 50 percent of the passenger load on a
14 flight, especially on our Copenhagen flights. SAS
15 estimates that minimum connect times will increase from
16 roughly 30 to 45 minutes, today, to 90 to 120 minutes,
17 two hours, at its Scandinavian departure airports, if
18 profiling is Implemented at SAS airports.

19 Intercepting the transfer passengers for
20 profiling is just part of the problem. The other part
21 is the airport infrastructure at Copenhagen, Stockholm,
22 and Oslow, that will require major reconstruction to
23 handle the profiling requirement efficiently. Transfer
24 passengers now proceed directly to the boarding gate,
25 since they are all in transit, and already have their

1 boarding passes. If profiling is implemented, these
2 passengers would have to be directed to some kind of
3 transfer passenger station, in the departure hall, to
4 be interviewed, or else new structures would be needed
5 to be constructed adjacent to departure gates used for
6 U.S.-bound flights to handle the profiling
7 requirements. This airport infrastructure is not in
8 place, today, and SAS, at this time, cannot predict
9 when it could be available. This is a question that
10 could be addressed by the airport authorities, such as
11 ACI, and their trade associations.

12 While connecting passengers are being
13 profiled, their baggage will have to be X-rayed. This
14 creates another bottleneck that will extend the minimum
15 connect times. Again, this is an airport
16 infrastructure problem, as well. The airport
17 authorities at the Scandinavian airports do not possess
18 enough X-ray machines to process the volume of baggage
19 required under the proposed rule. However, as noted,
20 all European airports are scheduled to be able to
21 X-ray all baggage, after the Year 2000, when new,
22 Europe-wide security procedures will go into effect.
23 Until then, it will be almost impossible for SAS to
24 implement this requirement.

25 SAS' s estimate of the added cost for

1 identical security program to be implemented do not
2 reflect these cost elements that will be borne by the
3 airport authorities. The SAS estimate reflects only
4 costs incurred by SAS. These include 25.6 million in
5 lost passenger revenues, reflecting over 35,500
6 passengers, from missed connections that could not be
7 accommodated due to the longer minimum connect times,
8 5.5 million in higher payments to security
9 subcontractors that would handle the profiling and
10 other security measures, one airport, and 2 million to
11 establish a new SAS security operation at the Oslow
12 Airport. The total is 33.1 million, annually.

13 If SAS' s increased costs are matched by those
14 of other foreign carriers, the total industry costs
15 will obviously dwarf the FAA's conservative estimates.

16 Now, let me turn briefly to our legal
17 objections, which we will address, of course, in
18 greater detail in our formal comments, to be filed on
19 March 23% The FAA defends the Notice of Proposed
20 Rulemaking, as a valid exercise of U.S. rights under
21 Article 11 of the Chicago Convention, which requires
22 foreign carriers to comply with the laws and
23 regulations of the destination State for admission or
24 departure from its territory. The FAA also cites Annex
25 17 to the Convention, as well as provisions of U.S.

1 bilateral air transport agreements.

2 As far as Article 11 is concerned, standing
3 by itself, in SAS' s view, this is a rather strained
4 interpretation, since the U.S. regulations for
5 admission being applied are not being applied in U.S.
6 territory, but to activities occurring in the territory
7 of another sovereign, thousands of miles away from the
8 U.S. But the U.S. justification also ignores the
9 interaction between Article 11 and Article 37 of the
10 Convention. Under the latter, each contracting State
11 undertakes to collaborate in securing the highest
12 practicable degree of uniformity in regulations,
13 standards, procedures, and organizations. ICAO
14 principles urge Contracting States to avoid
15 promulgating or enforcing rules which are more
16 exacting, or different, from the standards and
17 recommended practices contained in the annexes,
18 including Annex 17, as such divergent standards would
19 impact negatively on the undertaking to secure
20 uniformity. Yet that is precisely what will happen, if
21 the Hatch Amendment requirements are implemented, and
22 foreign airlines such as SAS are required to comply
23 with conflicting security directives issued by the FAA
24 and their homeland authorities. In this respect, the
25 Hatch Amendment clearly has extraterritorial effects,

1 and those extraterritorial effects place the United
2 States in violation of its obligations under Article
3 37.

4 The proposed requirement for identical
5 security programs also conflicts, we believe, with the
6 aviation security provisions of the U.S./Denmark,
7 Norway, and Sweden air transport agreements. Article
8 8(d) of the U.S./Sweden agreement, for example,
9 provides that a contracting party shall, quote, "also
10 give positive consideration to any request from the
11 other contracting party for special security measures
12 to meet a particular threat." Unquote.

13 The principle underlying this provision is
14 that changes to aviation security requirements are to
15 be determined on a government-to-government basis,
16 not by the FAA's direct regulation of the foreign
17 carrier security measures in its homeland territory.
18 If the security threat has changed since the bilateral
19 came into force, and the U.S. desires special security
20 measures to be imposed outside of U.S. territory,
21 Article 8(d) requires that the United States make that
22 request of the Swedish and other Scandinavian
23 authorities on a government-to-government basis.
24 Promulgation of the proposed rule, at least to SAS,
25 would be a violation of that U.S. bilateral

1 undertaking.

2 In conclusion, SAS objects to the proposed
3 rule. It will be operationally difficult, and
4 enormously expensive for SAS to implement. Its
5 implementation would violate the Chicago Convention,
6 and provisions of the U.S./Scandinavian bilateral
7 agreements. And finally, SAS seeks clarification from
8 F'AA whether the proposed rule, if finalized, would
9 apply more than just SAS's Stockholm flights, which is
10 the only Scandinavian airport which currently receives
11 U.S. carrier service.

12 I thank you for affording SAS this
13 opportunity to present its views.

14 MS. KLEPPER: Thank you, Mr. Goldman.

15 ADM. FLYNN: If I may, in clarification of
16 the point with regard to Copenhagen and Oslow, the rule
17 requires the foreign air carrier, in its operations to
18 and from airports from the United States, to adhere to
19 the identical security measures that the Administrator
20 requires U.S. air carriers serving the same airports to
21 adhere to. So if, as you say, Mr. Goldman, there is no
22 service to, U.S. air service, at Copenhagen or Oslow,
23 then these identical measures provisions of this rule
24 would not apply, at those airports.

25 MR. GOLDMAN: I thank you for that

1 clarification.

2 ADM. FLYNN: But for the service at
3 Stockholm, it would apply.

4 MR. GOLDMAN: I appreciate that
5 clarification, because SAS personnel have received
6 conflicting and different advice from various U.S.
7 Government officials, overseas. So that is very
8 helpful.

9 ADM. FLYNN: So we would need to look at, not
10 just the scheduled air service, but other air service
11 of a certain frequency that might bring the rule into
12 effect, but that is a matter of detail that we would
13 willingly take up with you.

14 MR. GOLDMAN: Thank you.

15 MS. KLEPPER: Any other questions or comments
16 from the panel?

17 MR. TEITELBAUM: Yes. I want to thank you
18 for the numbers that you have on page 6, breaking it
19 down into the components you do. You mention that
20 there would be 5.5 million in higher payments to
21 security subcontractors, and a certain amount in lost
22 revenues, and a certain amount for the new security
23 operation. Did I hear you say at the beginning that
24 you would provide more detail to each of these?

25 MR. GOLDMAN: Yes. We will have much more

1 detail in the formal comments to be submitted on March
2 23rd.

3 MR. TEITELBAUM: Thank you very much.

4 MR. GOLDMAN: You are welcome.

5 MS. KLEPPER: Thank you, Mr. Goldman.

6 It is now a couple of minutes after noon, so
7 I think it will be time to break for lunch. One note I
8 would like to make, on the sheet that was in the agenda
9 this morning, for lunch options, one of the
10 restaurants, Vie de France, I understand, is closed for
11 renovation right now, so that is not an option. We
12 will reconvene back here at 1:30. Thank you.

13 (Whereupon, at 12:05 p.m., a luncheon recess.
14 was taken.)
15

1 A F T E R N O O N S E S S I O N

2 (On the record at 1:30 p.m.)

3 MS. KLEPPER: Please take your seats, so we
4 can get started again. On the record.5 We have an addition to our panel this
6 afternoon that I would like to introduce, Bert
7 Kinghorn, who is the Director of Intelligence and
8 Security, Office of the Secretary, Department of
9 Transportation.10 ADM. FLYNN: Okay. I would like to note
11 something for the record. We, at FAA, **I and my**
12 colleagues, invited the members of some of the foreign
13 delegations to have lunch with us, today. They
14 accepted. We made it known, in giving the invitation,
15 that it would be inappropriate to have any discussion
16 of this rulemaking, during the lunch, and indeed, there
17 was no such conversation about any aspect of this
18 rulemaking. Thank you.

19 MS. KLEPPER: Thank you, Admiral Flynn.

20 Now, to go back into our scheduled speakers
21 for this afternoon, our first scheduled speaker is
22 Karl-Heinz Hemmer, Director Civil Aviation Security of
23 German Federal Ministry of Transport, Building and
24 Housing.

1 PRESENTATION OF THE
2 GERMAN FEDERAL MINISTRY OF TRANSPORT,
3 BUILDING **AND** HOUSING

4 BY KARL-HEINZ HEMMER:

5 Good afternoon, ladies and gentlemen. Yes,
6 it is very difficult, Ida, to understand that, here is
7 an aviation man responsible for building and housing.

8 MS. KLEPPER: You have a big job!

9 MR. HEMMER: It would be a nice job, after my
10 retirement, which will come soon, so I am thinking of.
11 But the reason is, there was a change in government in
12 September, last year, so new government, new ideas.
13 And even though Admiral Flynn said there were no
14 discussions-on -- to happen during the lunch, I
15 participated, he is right. But one of my friends was
16 there, and we thought about the procedure to come.

17 Everybody says, no, no, no, we don't want
18 this. But is anybody here to have any countermeasure
19 available? Yes, we have. This is not part of my
20 presentation. It just came to me, mentally, without
21 speaking. Maybe it is the spirit of our very good
22 cooperation, that we will, if this does not help to
23 avoid the implementation of the Hatch Amendment, then
24 we will take hostage all the Kaslows in the world,
25 and we will announce we will shoot one after the other.

1 Why shouldn't we use the behavior of terrorists?

2 Because they might listen to us. I don't know where
3 the bucks are, but there might be some. Even the
4 member of the Hill might listen to what we were saying
5 here.

6 So this is just, off records, if you don't
7 mind. Otherwise, we will be the losers.

8 (Laughter.)

9 MR. HEMMER: I am here, on behalf of my
10 government, that means, on behalf of the Federal .
11 Ministry of Transport (and Housing), and Minister of
12 Interior, and the foreign office. So I am not just a-
13 one 72 tall people, 70 meters tall **person**, **very** old.
14 I just was sent here, to show you that there is still a
15 German fighting for good cooperation between U.S. and
16 Europe.

17 It is our feeling, our belief, that the
18 intended implementation of the Hatch Amendment does not
19 give any improvement in the field of aviation security.
20 I don't want to repeat anything which has been said,
21 this morning, very correctly, but some items should be
22 recalled to our mind not to forget. One is the
23 so-called to-and-from aspect. Implementation of the
24 extra matters only on those non-U.S. airports where
25 U.S. carriers are operating from, that means different

1 threat level between airports of the same country. To
2 my mind, ridiculous! And we do not see the Hatch
3 Amendment is based on a solid and careful threat
4 assessment. This is a fact. And some German concerns
5 in this respect, I would want to touch upon the
6 extraterritorial or other legal issues, that the
7 conflict is programmed, should the new U.S. law be
8 implemented outside the U.S. territory.

9 We have in our country assessed the
10 theoretical, I say again, the theoretical
11 implementation of the amendment for a dateline in the
12 beginning of the Year 2000, and here are some facts
13 which we have said are very essential to be mentioned.
14 First, we would have to invest at least 50 million
15 deutsch marks to just pay this stuff, the authority
16 screening stuff, not mentioning to pay extra room for
17 the profiling, not speaking of extra techniques, just
18 the authority obligation to do the screening, this is
19 50 million deutsch marks, extra. That means
20 \$50 million on top of \$250 million paid by the
21 government to implement 100 percent screening of whole
22 baggage. So money is an aspect.

23 But we all know, if we all would say these
24 measures are necessary, because of the threat, nobody
25 would talk about money. But, as I said before, in

1 Germany, we do not see any need to have this
2 regulation, these extra measures, so why should we
3 spend money in vain?

4 Second is, it was touched open, already, slot
5 allocation systems, or the system. We have looked at
6 Frankfurt Airport. At present, we have thirty, three
7 zero, departures a day, to destinations in the United
8 States, nonstop. That means the last point of
9 departure is Frankfurt. Out of these thirty, seventeen
10 are German carriers and non-U.S. carriers. Thirteen
11 are U.S. carriers.

12 Now, taking into account the extra measures,
13 especially the profiling, and other things which have
14 been mentioned already this morning by airline
15 representatives, mean that, out of 30 flights, only
16 maximum ten could be given a slot at a convenient time,
17 because nobody wants to leave by 2:00 o'clock in the
18 morning, arriving 7:00 o'clock in the morning in the
19 United States, or whatever time play you want to do.
20 It is inconvenient. The commercial aspect in the this
21 regard has been spelled out already, so the loss is
22 tremendous, or we could say, people coming from Africa,
23 wanting to fly to U.S., they mostly travel through
24 Europe. They arrive 7:00 o'clock in the morning, to
25 catch the next flight, 10:00 o'clock or 9:00 o'clock,

1 from Europe to United States. That is, looking to the
2 figures, ten out of thirty. Seventeen are non-U.S.
3 carriers, and I think, well, I must say, I **believe**,
4 that my government will give the ten most convenient
5 slots, who may have the answer, not to foreigners,, but
6 to own carriers. This is obvious. This is normal, I
7 think.

8 This is one aspect. So the slot **allocation**,
9 going directly along with the transfer times. They are
10 just gone, and this has to be considered.

11 And, as I said, the system, the allocation
12 system, would be mostly influenced by the very time-
13 consuming, space-consuming, so-called profiling system
14 presently done in our country, on our airports. And at
15 present, we have five airports, international airports,
16 where U.S. carriers and non-U.S. carriers leave on a
17 direct flight to U.S. That means thirty out of
18 Frankfurt, ten from other airports in Germany.

19 Another aspect I have to mention is that, due
20 to the fact that our German Aviation Act regulates the
21 responsibilities in the field of security, that means,
22 one part is given to the authorities, one part to the
23 airports, and one to the airlines, this is, and will
24 be, in the future, a part of this regime, to find
25 regulations, matters, and concepts, which respond

1 directly to the threat, or the risk, and also to the
2 operational requirements of airports at all national
3 and international airlines. .

4 Germany had to change the law, or has to
5 change the law, if the Hatch Amendment should be
6 implemented in Germany. And to change the law means
7 you have to convince politicians, means that it is
8 necessary, so I don't think it will come.

9 In concluding my remarks, I strongly ask the
10 responsible authorities in the United States to
11 reevaluate the implementation of the Hatch Amendment.
12 It is not only a matter of extraterritorial or other .
13 legal aspects, which counts so much. It is, this is my
14 belief, the-distortion of the trans-Atlantic air
15 traffic, and moreover, disruption of the existing, very
16 good cooperation between the FAA and many authorities
17 abroad. The implementation of the amendment would,
18 that is my firm belief, make friends to enemies, a
19 paradox, as such.

20 Therefore, the implementation is, this is the
21 German official position, not necessary. It is
22 inappropriate. It is not respecting a State's
23 sovereignty. It is a pure commercial battle, and as
24 David Lord already said, this morning, a nonsense for
25 the security area. And consequently, we say, it is not

1 acceptable.

2 Referring again to the enemy/friendship
3 issue, I think, let us avoid this war. There is war
4 enough in the world. Thank you.

5 MS. KLEPPER: Thank you. Are there any
6 questions or comments from the panel? None? Thank
7 you.

8 Our next speaker is Horst Bittlinger, General
9 Manager, International Relations, Lufthansa German
10 Airlines.

11 **PRESENTATION OF**
12 **LUFTHANSA GERMAN AIRLINES**
13 **BY HORST BITTLINGER:**

14 Thank you, madam. Good afternoon, ladies and
15 gentlemen. I am afraid I will not tell you too much
16 new arguments on the subject, but I think we should
17 really be impressed by the unanimous positions he have
18 been voiced on the subject, and the solidarity that has
19 been found in this issue. And you may know the
20 sentence, that saying a wrong sentence a hundred times
21 does not make the sentence more correct, but it also
22 works the other way around. Saying a right sentence a
23 hundred times does not make it wrong. And therefore, I
24 am afraid I will also have to raise some ideas that may
25 be familiar to you.

1 At Lufthansa German Airlines, utmost safety
2 and security is really what is on the top of our
3 requirements for our operations, and our excellent
4 security record is recognized by our customers, and is
5 recognized as one of the most impressing and favorite
6 issues of our product. But, depending on the role of
7 implementation, the rulemaking which is proposed shall
8 have far-reaching implications, regarding to customer
9 convenience, airport operation and capacity, slot
10 allocation, and route network planning. Therefore, we
11 must discuss this matter, not only with regard to
12 security implications, but also regarding customer
13 convenience, legal aspects, and operational
14 consequences.

15 Based on lists of the lists of security
16 measures required under the NPRM, the consequences of
17 the rulemaking have been revised by our business
18 partners and ourselves, and I promise, in our written
19 statement, we will certainly take the opportunity to
20 produce all the figures necessary to back our
21 arguments. But what is striking is, it is simply
22 impossible to introduce the passenger profiling or the
23 100 percent baggage screening idea. Impossible, at the
24 present stage, with the present spatial constraints of
25 our facilities. In fact, airport capacity and terminal

1 capacity would have to be reduced, and who knows
2 Germany a bit knows that all our larger airports are
3 suffering from airport capacity deficits, and therefore
4 the airports would less be to cope with their function,
5 as a part of public infrastructure. In addition, as
6 has been mentioned before, the minimum connecting times
7 would have to be increased significantly, and I will
8 add some figures what is meant with significantly,! in
9 our written statement.

10 We also expect these kinds of problems with
11 regard to other flights departing from the U.S.
12 airports, but the long-term consequences of this issue
13 might even be worse. Imagine that other countries
14 attempt to follow the example of the U.S., and attempt
15 to introduce their national security laws all around
16 the world, including at U.S. airports, and then, the
17 airlines have to cope with these maybe conflicting or
18 redundant security procedures.

19 In sum, the practical effects of this
20 ruiemaking, for the traveling public would be
21 disastrous.

22 **Now**, what would this mean, particularly for
23 Lufthansa? For our eighteen departures, daily, to and
24 from the U.S., we would have to revise and change
25 completely our passenger handling procedures, such as,

1 separate the U.S. flights from the common checking
2 areas, increase the transit times by a large extent,
3 and stop all our convenient special handling
4 procedures, such as curbside, off-airport, automatic
5 check-in, short connects, or fast check procedures.
6 What this means for the customer, you can imagine.
7 But, which is more detrimental is that we should have
8 to change our schedule, and network structure, our hub-
9 and-spoke system, completely, because we have to meet
10 larger transit times from U.S. airports. We have
11 revised aircraft and crew rotation schedules, and we
12 would face strong, large problems with regard to the
13 necessary slot changes.

14 We have calculated the economic impact of
15 these things, and what I can say here is, it will
16 amount to a three-digit amount, in millions of deutsch
17 marks per year, that will end up, for Lufthansa, only
18 with regard to additional costs, and lost revenues.

19 Now, I have some points on the legal
20 analysis. I think we have discussed thoroughly the
21 issue of the Chicago Convention and of international
22 law, but I would like to add just two more ideas. This
23 is the principle of efficiency, which requires the
24 States, with regard to security measures, to cause a
25 minimum of interference with civil aviation, whenever

1 possible. This is also a principle that would be
2 violated by the rulemaking, because, so far, we see no
3 evidence that there is any progress in security caused
4 by these measures.

5 In addition, we think the rulemaking could
6 also have some discriminatory effects on foreign
7 carriers, when it comes to the access to -- technology,
8 because, if we cannot have access to these instruments,
9 which are necessary for security measures, this is, of
10 course, detrimental to the carriers outside the U.S.

11 Now, I would like to turn to the bilateral
12 agreement between the United States and Germany, and we
13 see that the regime established by the Chicago
14 Convention has been completely confirmed, and repeated
15 in the bilateral arrangements, meaning that it is the
16 governments that are obliged to observe each other's
17 security provisions, but it is clearly up to the
18 individual government to take action and to impose the
19 measures needed for safe and secure air transport.

20 First, we have a clear-cut allocation of
21 competences, and to when matters of bilateral interests
22 are concerned, we have the principle of cooperation and
23 consultation, and this is what is needed here, and not
24 just to take unilateral action.

25 Now, what can we do at this stage? The NPRM

1 States, and this, I think, is a very important quote,
2 met FAA's assessment in the past of terrorist threats,
3 have indicated the necessity for some foreign flag
4 carriers to implement additional measures to afford a
5 level of protection similar to that of U.S. carriers.
6 In our view, the present-law does provide all the means
7 necessary to cope with these questions, on a **case-by-**
8 case and on a carrier-by-carrier basis. On the other
9 hand, we think it is completely out of the question to
10 establish identical procedures for all carriers
11 operating to and from the U.S. from the same airports,
12 if only a few selected carriers give rise to implement
13 additional security procedures.

14 And again, this is particularly true, if you
15 imagine that other countries might follow, and
16 establish their own procedures, be it for alleged
17 reasons of security, or be it as a matter of
18 retaliation, or whatever, but I think the risk is very
19 great that we are giving room to a system which avoids
20 the efficiency of operations in air transport.

21 Now, I think the short-term and long-term
22 consequences still cannot be calculated from today, but
23 we sincerely hope that aviation security will not be a
24 problem in the future, with regard to national
25 jurisdictions, or operational consequences, but it will

1 be established as it is, and as it proved, and stood
2 the test, by international cooperation. Rather than
3 conflicts of national jurisdictions, we would prefer to
4 see progress towards a more multilateral legal
5 framework, which helps our globally connected industry,
6 and we hope sincerely that the U.S. will continue to be
7 an active partner to support this development. Thank
8 you very much.

9 MS. KLEPPER: Thank you, Mr. Bittlinger.
10 Questions or comments from the panel? Thank you.

11 Our next speaker is William Karas, Counsel
12 for Swissair.

13 PRESENTATION OF

14 **SWISSAIR**

15 BY WILLIAM KARAS:

16 Hello, again. My name is still Bill Karas.
17 Madam Chairman, in order to avoid the echoing of my
18 previous remarks, I wonder if, at this point, we can
19 ask the transcriber to insert my full remarks into the
20 record at this point, and I will give an abbreviated
21 version, right now.

22 MS. KLEPPER: That is fine. That is what we
23 will do. All of the written statements that have been
24 given to us will be made part of the docket.

25 MR. KARAS: Okay. **Swissair** thanks the FAA

1 for holding this meeting and hopes that its views will
2 be received in the same constructive and cooperative
3 spirit with which they are offered.

4 The rule in question would require **Swissair**
5 to adopt and comply with aviation security measures
6 mandated by the FAA for application-at Swiss airports
7 on flights to the U.S. Moreover, such security
8 measures would have to be identical to the ~~measures~~ the
9 FAA requires U.S. carriers to adhere to when operating
10 out of any such airport on flights to the U.S.
11 **Swissair** believes that this rule, if finally adopted,
1 2 will do essentially three things.

- 13 • It will intrude impermissibly on the
14 territorial sovereignty of Switzerland (the
15 host State);
- 16 • It will result in an inefficient and chaotic
17 aviation security system in Switzerland,
18 detracting from an optimal security program
19 based on an accurate assessment of risks for
20 particular flights of particular airlines;
21 and
- 22 • Thirdly, it will run counter to the aviation
23 security regime -- Annex 17 of the Chicago
24 Convention -- established by the nations of
25 the world through ICAO.

1 **Swissair** believes that it is a clear
2 violation of the territorial sovereignty of Switzerland
3 for the FAA to dictate security requirements for Swiss
4 airports applicable to **Swissair's** flights to the U.S.
5 A nation may not make rules applicable inside the
6 territory of another nation.

7 Now let me skip down to 'Effective Security.'

8 **Swissair** deems aviation security to be a
9 mission of the highest order. However, **Swissair** also
10 believes that security rules should not be unilaterally
11 declared by a non-host State in a legal proceeding
12 outside the host State. Rather, appropriate and
13 effective security measures should be discussed and
14 developed in a cooperative framework outside any public
15 forum. Adequate security measures must be tailored to
16 the risks involved for particular flights, depending on
17 a variety of well-known factors, as well as on
18 information gathered by internal security authorities
19 of the host State.

20 Ironically, the end result of the proposed
21 rule could very well be not only conflict and confusion
22 but actually a less effective overall security system
23 than is currently the case at **airports** such as
24 Zurich's.

25 Now, with respect to international

1 agreements, you have heard from myself and others about
2 the Annex 17, and the Chicago Convention. On behalf of
3 **Swissair** now, I would like to turn to the Switzerland/
4 U.S. air services agreement, the security article in
5 particular, Article 7, which is less than crystal clear
6 on whether anything in that article is meant to alter
7 the international law tenet that the host State, rather
8 than the State of first arrival, has primacy to dictate
9 security measures applicable to airlines of the host
10 State, within the host State, with respect to flights
11 destined to the other State.

12 The very first sentence of the article, and
13 this it has in common with all the other bilateral
14 security provisions that I have seen, the very first
15 sentence refers to Parties' "rights and obligations
16 under international law." Arguably, therefore, the
17 principles of international law, including the basic
18 principle of territorial sovereignty, condition all the
19 undertakings which follow, in the security article.

20 More telling, perhaps, is paragraph 3 of
21 Article 7 in which each Party in effect undertakes that
22 its airlines (and its airports) shall abide by its
23 civil aviation security program, as that term is used
24 in Annex 17 to the Convention. In other words, as
25 **Swissair** understands it, paragraph 3 directs

1 Switzerland to require Swiss airlines and airports to
2 comply with the civil aviation security program of
3 Switzerland, not of the U.S. This reading is
4 consistent with the host State responsibility under
5 Annex 17.

6 Moreover, the second sentence of paragraph 4
7 of the security article, Article 7, invests each Party
8 with the responsibility to ensure that adequate
9 aviation security 'measures are effectively applied
10 within its territory to protect aircraft and to inspect
11 passengers, crew," et cetera, during boarding or
12 loading. Under this provision, Switzerland, not the
13 U.S., is responsible for aviation security within
14 Switzerland.

15 All of this supports host State
16 responsibility and primacy. The first sentence of
17 paragraph 4 raises the question of whether Switzerland
18 can impose its own civil aviation security program on
19 U.S. airlines operating flights out of U.S. airports
20 destined for Switzerland, and vice versa. Swissair
21 doubts that this is what was intended in that sentence,
22 given that such an interpretation would mean that the
23 U.S. has agreed to cede to Switzerland jurisdiction
24 over security on U.S. airline operations at U.S.
25 airports when flights are destined to Switzerland as

1 the foreign nation of first arrival, and vice versa.

2 In any event, the sentence in question seems to

3 **Swissair** a slim reed upon which the FAA can base a rule

4 that directs **Swissair** to comply with U.S. security

5 regulations at Zurich Airport, for example, and that

6 requires **Swissair** to adhere identically to whatever the

7 FAA requires of U.S. airlines at Zurich Airport.

8 **Swissair** believes that this is just the kind of policy

9 issue that should, if necessary, be deliberated upon in

10 a friendly manner within ICAO, the entity established

11 by the world's nations to develop a harmonious global

12 civil aviation regime.

13 Thank you. Any questions?

14 MS. KLEPPER: Thank you, Mr. Karas. Any
15 questions or comments?

16 MR. KARAS: Michael Chase, any questions?

17 MR. CHASE: Did you want to extend and revise
18 your earlier remarks?

19 MR. KARAS: Thank you so much.

20 MS. KLEPPER: Thank you, Mr. Karas.

21 Our next scheduled speaker is Jim Marriott,
22 Director of Security Policy and Legislation, Transport,
23 Canada.

PRESENTATION OF THE
TRANSPORT, CANADA

BY JIM MARRIOTT:

Good afternoon. For the record, I am Director, Security Policy and Legislation, with Transport, Canada, the regulatory authority in Canada comparable to the FAA and Department of Transport here in the U.S.

Good afternoon, panel members, and members of this distinguished audience. Let me begin by saying also that my comments are in addition to subsequent submissions Canada will be making in response to the Notice of Proposed Rulemaking.

I would like to thank previous speakers for very eloquently and succinctly conveying, I think, very compelling objections to the NPRM, objections that Canada shares, particularly with respect to costs that will be incurred, not justified by legitimate security needs.

I think I would also like to shift gears a little from what has been apparent, up to this point, and thank the FAA for the opportunity to express our position, and to thank them for their ongoing leadership in aviation security. The work the FAA does has been and continues to be formidable, challenging,

1 and much welcome around the world, I am sure.

2 We share your concern for the need to combat
3 terrorism by all necessary, and I underlined necessary,
4 means.

5 We in Canada share security concerns with the
6 U.S. on many fronts. We share I think what is the
7 largest international air transport market in the
8 world. We even share in having very similar
9 organizations for managing and regulating aviation
10 security threats and risks. We are guided by identical
11 principles in many, many respects. But we part company
12 on the Hatch Amendment, because it is counter to
13 principles of administering aviation security in a
14 manner proportional to the level of risk, and we object
15 to the unnecessary costs that will result from it.

16 Now, Mr. Teitelbaum, I would like to, I would
17 like to address an aspect of costs, because we are
18 particularly concerned about impacts from the
19 regulation, impacts the regulation will have, if United
20 States carriers operating from Canada are assessed to
21 be at an increased level of risk, at a later date, and
22 baseline measures applicable to U.S. carriers are
23 increased accordingly. And this is a speculative
24 matter. It is looking into the future, and it is a
25 future that is quite uncertain, especially in the world

1 of security, as we know.

2 The economic and commercial costs of these
3 impacts are incalculable at this time, but I hope that,
4 in the assessment of the economic impacts of this rule
5 that you are addressing in full detail what may be very
6 high and very legitimate costs, downstream. Such
7 uncertainty about the future under Hatch adds to the
8 depth of our objections to the proposed rule.

9 Now, to put this concern in other terms, it
10 appears to us that Congress has determined, in effect,
11 that the threat to foreign air carriers will be
12 identical to the threat to U.S. air carriers, in their
13 operations to the U.S., in perpetuity. That strikes me
14 as a particularly important aspect of this.

15 Security experts, and their administrations,
16 gathered here, agree that such a determination is
17 fundamentally flawed, and counterproductive to
18 effective security.

19 In summary, let me say, aviation security
20 works, when regulated measures are credible, and they
21 are credible because they are necessary for the threat.
22 The NPRM, the Hatch Amendment, undermines this
23 longstanding and fundamental principle.

24 MS. KLEPPER: Thank you. Mr. Marriott, would
25 you wait just a moment?

1 MR. MARRIOTT: Yes,

2 MS. KLEPPER: In case we have any comments?
3 Questions? No? Thank you.

4 MR. MARRIOTT: Thank you.

5 MS. KLEPPER: Our next scheduled speaker is
6 Ito Tamio, All Nippon Airways.

7 PRESENTATION OF THE

8 ALL NIPPON AIRWAYS

9 BY ITO **TAMIO**:

10 Good afternoon. . My name is Ito Tamio, from
11 All Nippon Airways, Tokyo, Japan, and, first of all, I
12 would like to express my appreciation to FAA for
13 allowing me to attend this claim and giving me
14 opportunity to make a comment. ?

15 Apart from the comments made by Japan Civil
16 Aviation Bureau, I would like to make a comment, in
17 terms of the financial impact resulting from the
18 implementation of this NPRM, as, because, as the
19 current Japanese airline industry is in the midst of
20 severe economic depression, now, and this program would
21 make the situation worse, and we have to raise
22 opposition against this new proposal, on the following
23 reasons.

24 First, one, we have not confirmed a
25 definition of low end status of the ground security

1 coordinator, yet, but ANA, there in Japan, is locating
2 more than thirty security officers, same as GSC, at
3 eight major domestic airports, in Japan, and all other
4 airports in Japan are covered by well-trained station
5 managers, with long experience of security. We
6 consider that security measures are fully taken today
7 in Japan. Furthermore, if we should place ground
8 security coordinators in the USA, additionally, it
9 would bring about a cost increase of about 1.3 million
10 U.S. dollars, even only in respect of their salary and
11 training charges. And this figure includes Nippon
12 Cargo Airlines, our cargo subsidiary company, operating
13 to the USA and Europe.

14 Second point. Reliable systems are
15 established in Japan for the issuance of passes to the
16 access-restricted area, so that the airports are well-
17 controlled by the airport authority to prevent crimes
18 or illegal interference. We request the USA to
19 establish a system for the issuance of the pass to the
20 restricted area, and consequently, there will be no
21 need for a guard in service on parked aircraft,
22 motoring persons of access control to the restricted
23 area. This program should not be primarily brought to
24 the airlines, or should not be covered by airlines,
25 even if it is related to aviation security.

1 Third, if we should implement the FAA
2 **program**, modification or expansion of terminal, and
3 buildings, and airline facilities, will be required, as
4 they are built on a small land site in Japan, unlike
5 the huge buildings in the facilities in the USA. In
6 addition to the huge amount of investment, we find it
7 impossible to implement this requirement, due to the
8 space problem of Japan.

9 Four, the details of the explanation of FAA
10 cost evaluation are not fully provided, so there is
11 still a great gap between the two parties. The
12 estimated cost of only ANA will be approximately
13 \$20 million, just for ANA only, including capital
14 expenditure and landing cost.

15 Under our present conditions, we find
16 impossible in accepting your program, due to the cost
17 problem of ANA, and in addition, space problems of
18 Japanese International Airport, Narita and New Kansai
19 Airport.

20 Now, I would like to finish my comment.
21 Thank you for your attention.

22 MS. KLEPPER: Thank you, Mr. Ito. Any
23 questions or comments? No? Thank you.

24 MR. TAMIO: Thank you.

25 MS. KLEPPER: Our next scheduled speaker is

1 Kamal Nawash, American Arab Anti-discrimination
2 Committee. Mr. Nawash? Mr. **Kamal** Nawash.

3 We will move on to the next scheduled
4 speaker. The next scheduled speaker is **Wasa** Nasser.
5 Is Mr. Nasser in the auditorium? Okay. I don't see a
6 response.

7 Moving on, the next scheduled speaker is Dr.
8 Mohammed Sekkarie. Dr. Sekkarie.

9 The next scheduled speaker is Dr. **Faris**
10 Kawas. Dr. **Faris** Al Kawas.

11 Okay. We had this morning two additional
12 requests to speak, so I will call on them at this time,
13 and then go back over the absent speakers. The first
14 additional speaker that we had was Yuri Nicisco, from
15 the Argentine Air Force. Yuri Nicisco.

16 And the second additional request that we had
17 received was Haidar Jalal. He is with Aviation
18 Consulting International.

19 PRESENTATION OF THE
20 AVIATION CONSULTING **INTERNATIONAL**
21 BY **JALAL** HAIDAR:

22 Thank you for giving me the opportunity to
23 express my opinion. I don't have a written speech, as
24 the rest of the eloquent speakers who came to this
25 podium, this morning and this afternoon. However, bear

1 with me, for just a few ideas, a few remarks.

2 I don't think that this is about sovereignty
3 or airport capacity, or even facilitation and the
4 inconveniencing of passengers. It seems that the
5 bottom line here is, dollars versus security. I think
6 we have a choice, or an option to make, not more than
7 one.

8 Some of the very interesting arguments that
9 were put forward this morning are really alarming, yet
10 concerning. I may be on the safe side if I say,
11 dangerous.

12 If anybody in this room does not believe that
13 the threat level is on the increase, I would like to
14 know. Anybody who does not believe that the threat
15 level is increasing, nowadays, worldwide? It seems
16 that everybody agrees. Then something -- must be
17 taken, and given to really changing security,
18 worldwide.

19 Some of these papers this morning said
20 that -- like Mr. Karas, we discussed this before
21 lunch -- that he likes to see **NPRM's**, or other security
22 issues, discussed by the professionals, and let the
23 professionals handle it, and not the politicians. That
24 is true. I think, if we go back a bit, we know that
25 even the Chicago and the Warsaw Conventions were

1 drafted, and passed by politicians and diplomats who
2 have nothing to do with aviation.

3 I hear lots of arguments about Annex 17, but
4 I think Annex 17, we are now, that does not really have
5 the teeth that it should, and that is going to be also
6 amended, as well.

7 Other arguments were put forward like this is
8 a cost thing. Mr. Heinz Hemmer said this may cost his
9 government and his airline about 50 million deutsch
10 marks. The Counsel for SAS put a similar number,
11 within U.S. dollars, I believe, and so forth. But
12 let's not forget, and we -- remember, and this is
13 something that it is still going on today, that the
14 agreement -- did not really stop at a certain figure --
15 we know, especially the lawyers here, how many millions
16 of dollars were in the insurance of that particular
17 flight. The litigation costs now have passed, or
18 surpassed, the \$700 million, by 110 percent, and we
19 should know that.

20 Yes, some passengers may be inconvenienced,
21 but -- it is much better to get the passenger safely
22 to -- destination -- being inconvenienced, for a few
23 moments, for such NPRM's. I would -- let's apply this
24 NPRM solidly 100 percent as it was drafted, but -- to
25 see some people -- to call for, I would not say -- but

1 to work together, on this, instead of voicing very
2 strong opposition. Something can be done about this.
3 Let's not kill it. We are responsible for this. We
4 are in business together.

5 Airport capacity. That is also another weak
6 argument. We all know that airport consultants and
7 engineer firms, when they design airports, or that,
8 20 years ago, ICAO, in specific, and I am sure that
9 ECAC was involved, and all the values -- ICAO
10 organizations were involved as well -- was involved in
11 defining design guidelines for-security at airports.
12 That is not an excuse.

13 If we don't believe there is a risk, or an
14 increasing risk, in this world -- I think we should not
15 be -- just, I will try any -- or any suggested ideas, I
16 think, everybody in this room has got a historical
17 responsibility to join forces, instead of opposing such
18 a proposed amendment. Thank you.

19 MS. KLEPPER: Thank you, Mr. Haidar. Going
20 back over our list of scheduled speakers, Mr. Kamal
21 Nawash.

22 **PRESENTATION OF THE**
23 **AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE**
24 **BY KAMAL NAWASH:**

25 Thank you. I was scheduled to speak around

1 3:40, and I just happened to show up early, and I did
2 not get a chance to hear what anyone else was saying,
3 but I have a feeling what I am going to talk about is
4 substantially different than what everyone else talked
5 about. I wanted to talk about the effect that
6 enhanced, so-called enhanced security, airline
7 security, is having on certain people, especially in
8 terms of deprivation of civil liberties, and so on, and
9 what this proposed legislation could mean, based on our
10 own experience.

11 My name is Kamal Nawash, and I am the Legal
12 Director of the American-Arab Anti-Discrimination
13 Committee. ADC is a nonsectarian, nonpartisan
14 organization for the purpose of defending the civil
15 rights of Arab Americans and other groups.
16 I appreciate the opportunity to submit this statement
17 on behalf of the ADC about aviation security.

18 We are here, today, because FAA proposed to
19 amend existing airplane operating security rules for
20 foreign air carriers and foreign operators of
21 U.S.-registered aircraft. The proposal would implement
22 provisions of the Antiterrorism and Effective Death
23 Penalty Act of 1996. In essence, this proposed
24 regulation would require that the security programs of
25 foreign air carriers adhere to identical security

1 that the Administrator requires U.S. air carriers,
2 serving the same airport, to adhere to.

3 Because the use of. profiling of what a
4 potential terrorist may look like, this plays a
5 significant role among the security methods used by the
6 U.S. air carriers, it will be likely required of
7 foreign air carriers, as well. It is already being
8 used by many air carriers, but the implementation of
9 this regulation will most likely make this a rule.
10 This is the primary security method that I will focus
11 on today. I will focus on the use of profiling,
12 because there is no evidence that it is an effective
13 security method, while there is substantial evidence
14 that it facilitates racism.

15 It has been almost three years since the Gore
16 Commission instituted the profiling system for the
17 purpose of enhancing airline security. Three years
18 ago, ADC, ACLU, and various other civil rights
19 organizations, warned that profiling does not enhance
20 security, but does substantially violate civil
21 liberties. At that time, however, those warnings were
22 considered mere speculation. Today, we need not
23 speculate. Three years since the institutionalized use
24 of profiling, there is no evidence that the use of
25 profiling in any way enhances security. Even the FAA

1 that there is no way that it can determine if the
2 methods used in fact do enhance security. This
3 admission is done on page 23 and 24 of the proposed
4 regulation.

5 There is substantial evidence, however, that
6 certain ethnic groups are targeted due to stereotype.
7 In fact, the use of profiling has had such a negative
8 effect on Americans of Arab descent that many now fear
9 flying, because of the humiliation they may encounter.
10 One lady that was the victim of profiling told me that
11 the only thing more humiliating than a stranger going
12 through my underwear is having every passenger in the
13 plane stare at me as if I was a terrorist.

14 I myself was profiled four times. I am now
15 so apprehensive of a -- airline teller, that I wait
16 until everyone else passes, before I approach the
17 counter, because of the fear that I might get stopped
18 in front of everyone else, where a more comprehensive
19 search might get done. I know there is a very high
20 probability, if I fly, I will be pulled out of a line
21 today, because of my heritage as an Arab American.

22 Because the American Arab community has been
23 the primary victim of airline profiling, ADC has
24 developed substantial expertise on the issue of airline
25 security, and passenger profiling. For this reason, I

1 urge you to pay close attention to my comments.

2 In the past three years, hundreds of Arab
3 Americans have complained of. discrimination by various
4 airline carriers. The surge in anti-Arab
5 discrimination at airports is directly linked to the
6 adoption of a passenger profiling system. Profiling
7 which is designed to select suspect individuals most
8 likely to commit an act of terrorism is essentially
9 based on stereotype and racism.

10 Following the TWA Flight 800 crash, theories
11 abounded about the terrorist bomb as a cause of the
12 crash, and Arabs and Muslims became the targets of
13 unfounded speculation. As in the case of the Oklahoma
14 City and Atlanta Olympic bombing, this rush to judgment
15 by the media, some officials and terrorism experts
16 proved erroneous. Nonetheless, the White House
17 Commission on Aviation Safety and Security, chaired by
18 Vice President Al Gore, instituted -- profiling system
19 of airline security which has a disparate impact on
20 Arabs and Muslims.

21 The policies recommended by the Gore
22 Commission are now being implemented by the Federal
23 Aviation Administration, as well as domestic and
24 foreign airlines. These policies have resulted in the
25 singling out and humiliation, and humiliating Arab

1 American travelers solely based on their national
2 background. In fact, I have had one of my legal
3 assistants contact the FAA not too long ago, and ask
4 them about the records they have of people who are
5 complaining of discrimination, and we were informed
6 that all but two complaints about discrimination on
7 airlines are from Arab Americans, all but two or three,
8 and -we have that with us, that we will submit, that it
9 was in writing.

10 The profiling of air passengers is generally
11 performed by airline personnel during check-in, as well
12 as at the departing gate before boarding. When a
13 traveler is selected, he or she is subject to greater
14 security than other passengers, including questioning,
15 interrogation, and intrusive searches, most often, item
16 by item hand searches, conducted in public view.

17 Airlines claim confidentiality for not
18 releasing profiling criteria. Neither the airline nor
19 the FAA takes responsibility for the ethnic bias and
20 discrimination involved in the profiling system.

21 When a passenger complains to an airline that
22 he or she was treated unfairly, the airline typically
23 responds that they are simply applying standards
24 imposed by the FAA. In turn, FAA contends that the
25 airlines misinterpret and misapply their nonbiased and

1 nondiscriminatory criteria for profiling. The FAA,
2 however, has not been able to give a legitimate reason
3 as to why it is that Arab Americans are the primary
4 victims of this misinterpretation, these
5 misinterpretations and misapplications by the airlines.

6 . We have contacted various other
7 organizations, including the NAACP, the various
8 Spanish organizations, even some Jewish organizations.
9 None of them have reported to us any reports of their
10 members being targeted or more than the average public.

11 In the meantime, Arab American victims of
12 discrimination in airports find themselves with little
13 recourse for action, when the FAA and the airlines each
14 deny responsibility for the negative impact of the
15 profiling system. Several airline manuals explicitly
16 list ethnic traits in their profiling system.
17 Specifically, they direct airline security and
18 check-in personnel to profile passengers with Arabic
19 names, passengers born in Arabic countries, as well as
20 passengers traveling to or from the Middle East.
21 Although there may be additional criteria used in
22 profiling, the presence of Middle Eastern identifiers
23 such as Arab national origins and Arabic names indicate
24 that the profiling system is discriminatory.

25 It is important to note here that the United

1 States has specific statutes that prohibit
2 discrimination based on race, ethnicity, and other
3 protected classifications. Nonetheless, the outcome of
4 the FAA airline security rules, such as profiling,
5 clearly target Arab Americans. disproportionately than
6 other Americans.

7 Now the FAA wants to require foreign air
8 carriers to adopt rules that are identical to those
9 enacted by the FAA. The FAA's proposed regulation
10 would not allow foreign air carriers to provide less
11 security than the FAA requires, - but would allow them to
12 exceed FAA regulations. This right to exceed FAA
13 regulations will spell disaster for the Arab American
14 community. It is clear that certain carriers such as
15 El Al discriminate based on race and ethnicity.

16 This type of discrimination could be
17 justified by stating that the FAA regulations allow
18 foreign air carriers to exceed FAA security
19 regulations, and their profiling -- based on race and
20 ethnicity enhance security. There is nothing in the
21 proposed that regulation that prohibits foreign air
22 carriers from discriminating based on race or
23 ethnicity. The end result of this regulation is that
24 foreign carriers will target, and discriminate against
25 Arab Americans. Further, there will be no recourse for

1 victims of discrimination. Foreign air carriers will
2 blame the FAA, and the FAA will blame foreign air
3 carriers.

4 This is already happening. Many Arab
5 Americans who are targeted and discriminated against
6 abroad are being told by foreign air personnel -- by
7 the way, foreign air carrier personnel in other
8 countries are not as reserved as employees of American
9 carriers, where, usually, employees of American-
10 carriers tell you, well, we cannot talk to you, because
11 of security purposes, people from other countries tend
12 to be more honest, I guess. Many Arab Americans who
13 are targeted and discriminated against abroad are being
14 by foreign air personnel that they are acting pursuant
15 to American demands. They are also being told that
16 they are targeted because they are Arab. Therefore, we
17 need not speculate as to whether foreign air carriers
18 will interpret FAA regulations as a license to target
19 Arab Americans. It is already happening. The FAA
20 regulation will mean the codifying, legitimizing the
21 use of racism, under the guise that air travel is being
22 made safe for everyone.

23 What makes the present FAA airline security
24 regulations even more troubling is that the FAA has no
25 evidence that its regulations are effective in reducing

1 terrorism, especially the use of profiling. This fact
2 is alluded to in pages 22 and 23 of the proposed
3 regulation. In essence, the FAA is taking a bite off
4 of civil liberties, without any quantifiable benefits
5 in return.

6 Three years. Three years of experience has
7 shown that profiling is not an advance in aviation
8 security. It is a retreat. Passenger profiling will
9 not stop bombing of airlines.

10 It is proposed to make passengers feel that
11 something has been done to prevent such crimes, even
12 though what would be done will not work. It is
13 invasive of privacy and is discriminatory.

14 Nobody believes more strongly than I, or more
15 strongly than does the ADC, that air travel must be
16 safe. Our employees and members tend to fly more often
17 than does the general public. Nobody, least of all our
18 members, want to feel that, to set foot on an airline
19 or an airport, is to take a substantial risk. I want
20 my mother to know that, when I, when she sees me off at
21 the gate, she will see me back home, in one piece.

22 To the credit of many in the airline
23 industry, including many people at this conference, air
24 travel is in fact the safest form of travel today.
25 This does not mean that it cannot be made safer. It

1 can. Nor does it mean that civil liberties must be
2 sacrificed for the cause of safety.

3 Some basic principles would serve to help
4 focus airport security efforts on actually improving
5 safety, instead of on measures that would infringe on
6 civil liberties, but not enhance safety.

7 First, passengers should not be detained,
8 questioned, and searched, as if they were potential
9 criminals, unless specific facts, specific to them,
10 indicate that they may have committed a crime.

11 Second, no passenger should be singled out
12 for heightened security measures on the basis of their
13 perceived or actual race, religion, national origin,
14 gender, sexual orientation, political opinion, or upon
15 their exercise of a constitutionally protected right
16 such as the right to travel.

17 Third, passengers not legitimately under
18 suspicion should not have to fear that their private
19 effects and private lives will be held up to public
20 scrutiny, or that private data about them will be made
21 accessible to others without their fully informed and
22 genuinely noncoerced consent.

23 The Fourth Amendment to the United States
24 Constitution provides that people and their property
25 shall not be subjected to unreasonable searches and

1 seizures. It requires that warrants issued to support
2 a search or seizure must be based upon probable cause
3 of criminality.

4 The Fourth Amendment is the cornerstone of
5 personal privacy in the United States. The Supreme
6 Court's holdings on the Fourth Amendment has created a
7 sliding scale. When there is no suspicion of
8 criminality, no intrusion will satisfy its requirement.
9 **As** evidence of criminality increases, progressively
10 more intrusive investigations are warranted.

11 For example, the U.S. Supreme Court has held
12 that when a police officer has only a reasonable
13 articulable suspicion of criminality, but not probable
14 cause, the police officer cannot conduct a full search
15 of a person, but can stop the person, and conduct a
16 limited pat-down, but only to ensure safety of the
17 officer and others nearby.

18 Another principle of privacy is the notion
19 that personal information about an individual will not
20 be used for purposes other than for the purpose for
21 which it was originally given, without the informed and
22 genuinely noncoerced consent of the person to which it
23 pertains. Likewise, the exercise of a constitutionally
24 protected right, like travel, should not be contingent
25 on the sacrifices of another constitutionally protected

1 right, like privacy.

2 While courts have endorsed administrative
3 searches in airports without a court order, based on
4 probable cause of crime, there are limits to this
5 doctrine. These limits revolve around the risks to be
6 avoided: the invasiveness of the search, the
7 opportunities the passenger has to avoid embarrassment,
8 and the stigma that attaches to the search when it is
9 done selectively.

10 Many of the aviation security measures used
11 by the FAA clearly fall outside of the administrative
12 search rubric, because they are more embarrassing,
13 stigmatizing, and intrusive, than the searches
14 currently within the doctrine. If checked luggage are
15 searched, passengers will no longer be able to avoid
16 embarrassment by putting personal in checked as opposed
17 to their carry-on luggage. The stigma attached to the
18 search will increase when other passengers see that a
19 handful of passengers have been selected as potential
20 terrorists by the computer for heightened security
21 measures, particularly when the selectees are required
22 to open luggage that they have already checked for
23 their flight.

24 The airport is not a no-privacy zone. The
25 Fourth Amendment is fully applicable, as are other

1 provisions of privacy. People have an expectation of
2 privacy in the contents of their baggage, in what they
3 have in their pockets, and under their clothing, and in
4 the personal informations about them.

5 The FAA believes that airlines should profile
6 passengers, and subject only those who fit the profile
7 of a terrorist to heightened security measures.

8 These measures include increased questioning, scanning
9 of their luggage with sophisticated technology, having
10 their luggage sniffed by trained dogs. Different
11 profiling methods would be employed depending on
12 whether a flight was domestic or international. Most
13 of the criteria for each are kept secret, but some of
14 the criteria are not. All of the criteria discussed
15 will distill from publicly available documents, or
16 reported by government or aviation officials, after
17 they were cautioned to report only information that
18 could be made public.

19 For international flights, the FAA mandates
20 that passengers be asked a series of questions, such as
21 whether they pack their own luggage and have kept an
22 eye on it since it was packed. Passengers whose
23 answers to those questions or are security concerns are
24 subject to heightened security measures. So are
25 passengers whose travel documents, based on secret

1 criteria, based a possible security problem. Likewise,
2 passenger conduct, such as nervousness and sweating,
3 can also trigger selection for heightened security
4 measures. Finally, travel to or from certain parts of
5 the world, including countries on the U.S. State
6 Department's list of States harboring terrorists, also
7 trigger heightened security.

8 These elements of the FAA profile for
9 international flights are public, but the profile
10 contains other elements that are secret. The FAA has
11 worked with Northwest Airlines to test the profiling
12 system for domestic flights. The system already
13 requires the evaluation of more than forty pieces of
14 data the airline collects from passengers. This data
15 includes the information passengers give, when they
16 make a reservation or appear at the ticket counter,
17 such as their address, their credit card number, or the
18 fact that the ticket was purchased with cash, whether
19 the ticket was purchased in advance, or surely before
20 departure, with whom they will travel, whether they are
21 presented identification, or chose to travel
22 anonymously, whether they will rent a car, when they
23 will depart, the origins and destination of the flight,
24 the destination of the passenger, whether the flight is
25 one-way or return, and other information.

1 The data also includes information in the
2 Northwest Airline frequent flyer world perks database,
3 such as the frequency of the passengers flying on
4 Northwest, and whether the airlines has repeatedly
5 communicated with passengers, at a known address.
6 Different bits of data, in different combinations,
7 somehow suggests a heightened security risk, making the'
8 passenger a selectee who fits the profile of a
9 terrorist, and will be subjected to heightened security
10 measures.

11 While some have defended profiling as merely
12 ruling out the passengers who appear to present no
13 risk, profiles in fact select a handful of passengers,
14 and stigmatize them as potential terrorists. Knowing
15 how few selectees must be picked out of the passenger
16 pool, if the checked luggage of each -- skip this part,
17 a second.

18 I want to talk a little bit about why
19 profiling, the use of profiling, I think, am I going
20 over the time, here? Am I getting close? I looked at ⁷
21 you with my peripheral vision, you are looking at your. ² ^{in your}
22 I am going to speed it up a little bit. How much time ^{word}
23 do I have?

24 MS. KLEPPER: Well, let me ask you.

25 (Discussion was held off-microphone.)

1 MR. NAWASH: Yes. Yes. I agree. I agree.
2 I should be sued.

3 MS. KLEPPER: Mr. Nawash. Wait a minute.
4 I had called Mr. Nasser, and he was not here, earlier.
5 Are you also taking his time?

6 MR. NAWASH: Well, yes. Yes. I will take
7 his time.

8 (Laughter.)

9 MS. KLEPPER: All right. You have been
10 speaking, according to my watch, for 20 minutes.

11 MR. NAWASH: Okay.

12 MS. KLEPPER: I will give you another five.

13 MR. NAWASH: Well, I had ten. I had
14 thirty -- but that is fine. That should be more than
15 enough.

16 I am going to skip to the proposals that we
17 have for the FAA.

18 MS. KLEPPER: Okay.

19 MR. NAWASH: Aviation security improvements
20 that actually enhance security need not come at the
21 expense of civil liberties. This is the message **here**.
22 Security profilers should be trained to identify
23 tangible evidence, giving rise to a reasonable,
24 articulable suspicion of criminal activity. Security
25 personnel should not be trained to stereotype, based on

1 protected characteristics.

2 Those airline security plans subject to
3 approval by the Federal Aviation Administration should
4 be required to include a complete bar to using actual
5 or profiled -- race, religion, national origin, gender,
6 sexual orientation, or personal opinion, as an element
7 in any -- or other scheme used to identify which
8 passengers are to be subjected to higher security
9 measures. Airline security systems should be tested to
10 ensure that they do not have discriminatory effect.

11 An independent administrative entity, similar
12 to the U.S. Equal Employment Opportunity Commission,
13 should be established, to receive and investigate
14 complaints of discrimination, or other inappropriate
15 security screening, and the mechanism should
16 supplement, not supplant, existing court remedies.
17 Complaints of inappropriate, discriminatory, or overly
18 intrusive security screening measures should be tracked
19 and reported, like on-time performances, so that
20 passengers know which airlines, and which security
21 vendors, are committing security-related abuses, and so
22 airlines can retrain problem agents.

23 A Passenger Bill of Rights should be posted
24 at ticket counters, to inform passengers in the U.S. of
25 their rights, such as the right to refuse to present

1 identification if they choose to travel anonymously,
2 their right to refrain from answering intrusive
3 questions, or to be subjected to intrusive security
4 measures, the consequences, if any, of exercising these
5 rights, and a way to contact the entity to which
6 complaints of security-related abuses should be
7 directed.

8 And lastly, the FAA should create mechanisms
9 in which lax airline security procedures can be
10 reported, so that, when a passenger identifies a
11 problem, they can be assured that it will be examined
12 by a neutral third party, instead of the airline.

13 And I apologize I took so long. I did not
14 plan, for some reason, I thought this would take ten
15 minutes. I did not time myself when I came here, but I
16 guess I wrote a lot longer than I thought. Thank you.

17 MS. KLEPPER: Thank you, Mr. Nawash. If you
18 will wait, for just a moment. Let me make sure the
19 panel has no comments or questions. No? Thank you.

20 MR. NAWASH: Okay. Thanks.

21 MS. KLEPPER: And again, let me confirm that
22 Mr. Nawash was speaking on behalf of Mr. **Wasa** Nasser,
23 also, who was listed on the program. So we will now
24 move on to Dr. Mohammed Sekkarie.

25 Dr. Faris Al Kawas.

1 And the other person that had asked to be
2 added to the list, again, Yuri Nicisco.

3 Okay. Before I open up to the floor, then,
4 to ask if there are any late comments that anyone else
5 would like to make, I believe Admiral Flynn has a
6 comment.

7 ADM. FLYNN: Well, only in response to a
8 question from the floor, and I will read that question.

9 Could you explain the FAA's position in
10 regard to the applicability of the proposed rule to
11 ~~cochair~~ ^{CODE SHARE} operations? Specifically, would the rule apply ✓
12 to a foreign carrier operating to the United States,
13 only through a ~~cochair~~ ^{CODE SHARE}, with a U.S. carrier? ✓

14 Well, if it is a U.S. carrier, the air
15 carrier standard security program provisions apply to
16 that U.S. air carrier, and the fact that it is
17 ~~cochaired~~ ^{CODE SHARED} with other carriers does not affect that. ✓
18 And if, on the other hand, it is a foreign flag
19 carrier, that is flying to the United States from an
20 airport that is served by U.S. carriers, then the
21 identical measures provisions would apply. It is the
22 intent of the rule that they would apply. If on the
23 other hand it is flying to the United States from an
24 airport which is not served by a U.S. carrier, the fact
25 that it is ~~cochaired~~ ^{CODE SHARED} does not require the ✓

1 implementation of the identical measures.-

2 MS. KLEPPER: Thank you for clarifying that.

3 Now, I would like to open the floor up, ask
4 if there is anyone that has not had a chance to make a
5 presentation, that would like to make one at this time,
6 or if someone who has made earlier comments would like
7 to make any statement?

8 Yes, sir. I would ask that, if you do like
9 to make a statement, raise your hand. I will recognize
10 you, and I would ask that you come to the podium, so
11 that your remarks can be on the record.

12 MR. LORD: Thanks very much. I would like to
13 make a formal. *2 - missing words?* ✓

14 MS. KLEPPER: Would you please identify
15 yourself, for the record?

16 MR. LORD: I am sorry. I am sorry. David
17 Lord, Director of Transport Security, U.K.

18 **FURTHER PRESENTATION OF THE**
19 **UNITED KINGDOM DEPARTMENT OF**
20 **ENVIRONMENT, TRANSPORT, AND THE REGIONS**

21 **BY DAVID LORD:**

22 I would like to make a request to the FAA to
23 extend the date of submission, the deadline for
24 submission of written comments, beyond the 23rd of
25 March, because you have told us that the transcripts of

1 today's proceedings will not available until 17 March.
2 And certainly, we, and I believe a number of others,
3 would find it extremely helpful to have more than just
4 six days between being able to get the transcript of
5 today's proceedings, and finalizing our written
6 submissions. So I appreciate you will not be able to
7 answer that immediately, but we would like to make that
8 formal request, and ask you can make it a bit longer.

9 (Discussion was held off-microphone.)

10 ADM. FLYNN: This being a significant rule,
11 my colleague Michael Chase has reminded me that we
12 would need to get the approval of the Office of the
13 Secretary of Transportation to extend the period for
14 comment. I would ask that the United Kingdom, that you
15 put your request in writing, that will be helpful to
16 us, and to indicate the extension that you would want,
17 the number of days extension that you would want. It
18 is usual, far from unusual, to extend the comment
19 period of rules.

20 MR. LORD: Thank you very much. It would be
21 days, rather than weeks. Thank you.

22 MS. KLEPPER: Thank you.

23 Is there anyone else who would like to make a
24 presentation or a statement at this time?

25 Is there anyone present who had asked to be

1 added to the agenda that I have not called on?

2 Okay. I will take this opportunity and
3 remind everyone that anyone who wishes to make
4 additional written comments on the proposed rule, if
5 you would, please submit those comments to the docket.
6 Once again, the docket number is FAA-1998-4758. Those
7 comments should be delivered to the U.S. **Department** of
8 Transportation Dockets, 400 Seventh-Street SW, Room
9 Plaza 401, Washington, D.C. 20590. We also accept
10 comments via the Internet. That Internet address is
11 **9-NPRM-CMTS@FAA.GOV.**

12 (Discussion was held off-microphone.)

13 MS. KLEPPER: Yes. And also, the restricted
14 docket for sensitive information, I had given that out,
15 earlier, and I can go back over that, again. That
16 should come to the FAA, Office of Civil Aviation
17 Security Operations, Attention: FAA Security Control
18 Point, with the same docket number, FAA-1998-4758, 800
19 Independence Avenue SW, Washington, D.C. 20591.

20 I would like to remind everyone again that
21 there will be a verbatim transcript of this meeting.
22 It will be available after March 17th. Information for
23 ordering a transcript is available at the registration
24 table. All the prepared statements presented today, as
25 well as an attendee list, will be placed in the docket.

1 I would like to thank everyone for your
2 cooperation and your input. By my watch, it is now
3 2:56 in the afternoon, and we are adjourned.

4 (Whereupon, at 2:56 p.m., the meeting
5 concluded.)
6

1
2 REPORTER'S CERTIFICATE

3 This is to certify that the attached
4 proceedings before: **FEDERAL AVIATION ADMINISTRATION**
5 **U.S. DEPARTMENT OF TRANSPORTATION**
6

7 In the Matter of: **PUBLIC MEETING ON PART 129:**
8 **SECURITY PROGRAMS OF FOREIGN**
9 **AIR CARRIERS**

10 **WEDNESDAY, FEBRUARY 24, 1999**
11 **WASHINGTON, D.C.**

12 were held as herein appears and that this is the
13 original transcript thereof for the file of the
14 Department, Commission, Administrative Law Judge
15 or the Agency.

16 **EXECUTIVE COURT REPORTERS, INC.**

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21 Dated: 2-24-99
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